

QUARTERLY REPORT
OF THE
ATTORNEY GENERAL
OF
ALABAMA
For the Period
January 1, 1946
Through March 31, 1946
Volume 42

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with Code 1940, Title 55, Section 228, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This Report covers all opinions rendered by the Attorney General from January 1, 1946, through March 31, 1946.

The Section of the Code referred to above requires that seven copies of this Quarterly Report be sent to each of the Probate Judges in the State, and the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, the County Superintendent of Education, and Deputy or County Solicitor. Said Code Section also requires a copy of said Report be sent each Circuit Solicitor and the chief executive officer of each incorporated municipality in the State.

If you have any suggestions to make regarding the improvement of the service, we should be glad to receive it.

The office of the Attorney General is anxious to render prompt and efficient service to the State and county officials.

Very respectfully,

WILLIAM N. McQUEEN,
Attorney General.

WETUMPKA PRINTING CO.
Printers and Publishers
Wetumpka, Ala.
1946

OPINIONS

January 3, 1946.

Hon. R. E. Solomon, Mayor,

City of Headland,

Henry County,

Headland, Alabama.

Code 1940, Title 51 § 2—Constitution 1901, § 91—Municipal Corporations—Water Works Systems—Taxation.

The Water Works System owned and operated by a municipal corporation is not subject to ad valorem taxation.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of December 8, 1945, is as follows:

"On September 14, 1945, the City of Headland, Alabama purchased from the Alabama Water Service Company, as authorized by the Alabama Public Service Commission the following described property, to-wit:

"All and singular the plant, system and property of Alabama Water Service Company owned by it and used or useful in connection with its plant and system of water works situated in the City of Headland and territory contiguous thereto in Henry County, Alabama, including all pumps, machinery, pipe lines, hydrants, services, meters, valves, tools; also all wells, reservoirs, tanks, standpipes, towers and pumping stations thereon or appurtenant thereto.

"A parcel of land situated in the City of Headland, Henry County, Alabama, and described as follows: Beginning at a point on the south side of the Atlantic Coast Line Railroad right of way thirty (30) feet west of the northwest corner of the Headland Fertilizer Works building, and running west along said right of way seventy-five feet (75) feet; thence in a southerly direction along the line of an unnamed alley or street one hundred forty-seven (147) feet to the corner of a fence; thence in an easterly direction along said fence seventy-five (75) feet; thence in a northerly direction one hundred seventy-one (171) feet to the starting point; said tract of land, and the water system at Headland, Alabama, of which it is a part, are subject to the lien of that certain mortgage or indenture of trust heretofore given by The Town of Headland, Alabama, to V. Hugo Marx, as Agent of Marx and Company of Birmingham, Alabama, as Trustee, dated July 1, 1928, and filed for record in the office of the Judge of Probate of Henry County, Alabama, on November 2, 1928, and recorded therein in Mortgage Book 174 at pages 241 et seq. the same securing an issue of bonds in the original principal face amount of \$23,-500.00.

"The deed conveying said property was executed to the City of Headland, Alabama, 'A public corporation of the State of Alabama,' and since that time said municipality has been using the property which comprises its city distribution system.

"The City does not have a Public City Works Board to hold and operate the property and the same is owned and operated by the City through its Mayor and Council.

"The above described property has heretofore been returned and assessed for ad valorem taxes by the Alabama Water Service Company. But the owners of the property went out of the Alabama Water Service Company and into the City of Headland on September 14, 1945, as herein-above related.

"Since the property has been owned and operated by the City of Headland, Alabama since prior to October 1, 1945, should it not be dropped from the tax role of property assessed for ad valorem taxes in Henry County, Alabama? Will you please give me the official opinion on this question so that we may use the same in advising the tax assessor and collector with regard to their duties in connection with the taxation of this property?"

From the foregoing it appears that the property above described was on October 1, 1945, at the beginning of the tax year 1946, the property of a municipal corporation of the State of Alabama and is therefore exempt from ad valorem taxation within the purview of Code 1940, Tit. 51, § 2 and Constitution 1901, § 91.

Said property should no longer be assessed for taxation as the property of Alabama Water Service Company nor should it be assessed as the property of the City of Headland. The City should by an appropriate instrument in writing claim the exemption and file the same in the office of the tax assessor.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

January 7, 1946.

Hon. E. B. Norton,
Superintendent,
Department of Education,
Montgomery 4, Alabama.

Motor Vehicles—Driver's License—Child Labor Law—Title 36, Section 66, Code of Alabama 1940; Title 36, Section 57, Code of Alabama 1940; Title 26, Section 349, Subsection 12, Code of Alabama 1940—General Acts 1945, No. 59—

A person fifteen years and over, if otherwise qualified may obtain driver's license.

Persons under sixteen years of age may not be employed to drive motor vehicles.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of December 4, 1945, is as follows:

"Your opinion is requested on the following question:

"Does Act No. 59, approved June 1, 1945, repeal or modify the provisions of Section 349, Title 26, Code of Alabama 1940, with respect to the age at which a child may be employed to operate a motor car or truck?"

You are advised that Act No. 59, approved July 1, 1945, does not repeal or modify the provisions of Title 26, Section 349, **Code of Alabama 1940**.

Prior to the enactment of Act No. 59, General Acts 1945, approved June 1, 1945, Title 36, Section 66, **Code of Alabama 1940**, provided, in part, that "A driver's license shall not be issued to the following persons: Any person less than sixteen years of age" Act No. 59, supra, has the effect of changing the word "sixteen" to "fifteen." It is apparent, therefore, that persons fifteen years of age and over if otherwise qualified may obtain a driver's license to operate a motor vehicle upon the public highways of the State of Alabama.

A section of the Child Labor Law which was not amended or repealed expressly provides, in part as follows: "No child under the age of sixteen years shall be employed, permitted or suffered to work in any capacity: . . . (12) nor to operate any automobile, motor-car or truck,"

This section we interpret to mean that no child under the age of sixteen years may be legally employed in any occupation a part of which includes the operation of an automobile, motor-car or truck.

Our courts have often stated that the law does not favor the repeal or modification of statutes by implication. It is another well-known rule of statutory construction that if possible each statute should be given its own independent field of operation.

It is our opinion that both Title 26, Section 349, Code of Alabama 1940, and especially Subsection 12 thereunder, and Act No. 59, General Acts, 1945, approved June 1, 1945, each have a separate field of operation and are not in conflict. Title 26, Section 349, Subsection 12, therefore is not modified by Act No. 59, supra. It results that persons of the age of fifteen years and over if otherwise qualified may be issued a driver's license under the provisions of the Driver's License Law. However, persons who are over fifteen years of age, although holding an Alabama Driver's License, may not be employed if they are under the age of sixteen years in any occupation which requires as part of that occupation the operation of an automobile, motor-car or truck.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

January 7, 1946.

Hon. D. P. Culp,
Superintendent,
Chilton County Board of Education,
Clanton, Alabama.

The Local Act 1935, page 164, has never been repealed by any other statute, general or local, and is the law governing the payment of the salary of the County Superintendent of Education of Chilton County and his expenses in discharging the duties of his office.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of November 21, 1945, is as follows:

"State auditors have recently voiced the opinion that the Chilton County Board of Education cannot pay travel allowances in excess of five cents a mile because of the general laws limiting such allowances for all State Employees to five cents. In other words, the auditors maintain that the Chilton County Board of Education is bound by the general laws of the State, local act notwithstanding.

"The Chilton County Board of Education maintains that the local law relating to the election of the county superintendent and the payment of his salary and expenses leaves to the Board the authority to determine both annual and per mile travel allowances. The Board further maintains that local laws operate in spite of seeming conflicts with general

laws unless the general law specifically aimed at repealing local acts. Accordingly, the Board of Education has ordered me to ask the following question: **Does the Chilton County Board of Education have authority to determine annual and per mile travel allowances for the superintendent of education and other employees of the Board?**

"I shall appreciate an early reply to this inquiry so that I may transmit to the Board your reply."

It appears that the contention of the State auditor is that a general statute of the State supersedes the local law for Chilton County on the question of allowances of expenses of the county superintendent of education. You cite no statutes, but we have made considerable search and investigation and find that the Legislature enacted two statutes on the subject for your county; one adopted on August 27, 1935, and the other was approved August 15, 1935. The first one mentioned is Local Acts 1935, page 164 and the other on page 148. The Act of August 27, dealing with the subject of the county superintendent of Chilton County has this provision "any expenses which have heretofore or may hereafter be incurred by him in the discharge of his duties as such superintendent of education of Chilton County, Alabama, in promoting and supervising the educational interest of Chilton County, Alabama, which salary and expenses shall be paid in the same way and manner as is **now provided** under the general laws of the State of Alabama for the payment of salaries and expenses of the county superintendents in the several counties of said state."

We presume the general law relied upon by the auditor is to be found in General Acts of 1945, page 195. This Act amends Section 154, Title 41 of the Code of 1940. This section 154 had its origin in the General Acts of 1933. The pertinent part of this Act of 1943 provides that the maximum amount allowable to a person travelling in the service of the State or any of its agencies for expenses **other than actual expenses of travel** shall be fixed by the Governor at not less than four dollars nor more than five dollars per day. It must be noted that the local act under review was adopted prior to the Act amending said Section 154 of the Code, Title 41.

This local act requiring that the expenses are to be paid in the same way and manner as is now provided under the general law removes the Act of 1943 from further consideration.

We presume Section 154 has not undergone any further changes on this question. This section provides that the maximum amount allowable to persons travelling in the service of the State for expenses other than the actual expenses of transportation shall be three dollars per day. This makes no attempt to fix the amount of actual travelling expenses.

None of these general laws can fairly be construed as in conflict with the Local Act controlling Chilton County. Under the rules governing statutory construction it is proper at this point to state a few that are here controlling. It is an established rule of construction that a repeal of an earlier statute by implication is not favorable and further that a law dealing with a special subject is not repealed by a subsequent general law dealing with the same subject unless in clear conflict with the former Act. And

again the rule of construction is that a general law will not repeal by implication a local law. There are many decisions of our Supreme Court to this effect. We will only consider one.

In the case of *State Ex Rel Tubbs v. White*, 160 Ala. 168, the question here involved was very thoroughly considered. Here it was said that in case of a special law and a general law the reason for the application of the principles are all the more cogent. That where the older statute is special, as here, and the subsequent one general mere inconsistency in the provisions of the two alone is not enough to imply a repeal of the older special law. Much more is said, but we will make only one quotation:

"The general statute is read as silently excluding from its operation the cases which have been provided for by the special one; for, as was said of the relation of a general act to a local one applying to a single county of the state, 'it is against reason to suppose that the Legislature, in framing a general system for the state, intended to repeal a special act which the local circumstances of one county had made necessary.' The fact that the general act contains a clause repealing acts inconsistent with it does not diminish the force of this rule of construction." (Page 171.)

From the foregoing authority we conclude that the local act of the Legislature (Local Acts 1935, page 164) has never been repealed and is the law controlling the payment of the salary of the Superintendent of Education of Chilton County and his expenses in discharging the duties of his office.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 9, 1946.

Hon. J. E. Broxson,

Tax Collector,

Geneva County,

Geneva, Alabama.

Municipalities—Taxation—Exemptions—Title 51, Section 884, Code of Alabama 1940.

Property acquired by a municipality subsequent to October 1 1944, is subject to taxation for the entire tax year commencing October 1, 1945, and ending September 30, 1946.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of December 31, 1945, is as follows:

"The Alabama Water Service Company owned the water systems at Geneva, Alabama, and Samson, Alabama, on October 1st, 1944, and subsequently sold same to the respective municipalities, with contract that the Municipalities assumed the prorata of the State and County taxes for the tax year 1945 as of the date of delivery to the Municipality, and since the Municipalities are not due any taxes they are offering to settle for the prorata tax year during which the water service company owned and operated the systems.

"Are these municipalities entitled to a tax free use of the systems for the part of the tax year after they bought and took over the systems?

"Or do I have to collect the full year tax from the Water Service Company or the purchasers of the water systems?

"I understand that the Water Service Company is liable for the Taxes because they owned the property at the beginning of the Tax year; but the Municipalities are insisting that since they are not liable for taxes that they should be allowed to pay only for the proportionate part of the tax year that these systems were owned and operated by the Company.

"Please advise me on this matter as I have never had a proposition like this before."

The lien of the State for ad valorem taxes is fixed by Title 51, Section 884, Code of Alabama 1940, which Section provides as follows:

"§ 884. Date of lien.—From and after the first day of October of each year, when property becomes assessable the state shall have a lien upon each and every piece or parcel of property owned by any taxpayer for the payment of all taxes which may be assessed against him and upon each piece and parcel of property real or personal assessed to owner unknown which lien shall continue until such taxes are paid, and the county shall have a like lien thereon for the payment of the taxes which may be assessed by it; and if such property is within the limits of a municipal corporation such municipal corporation shall have a like lien thereon for the payment of the taxes which may be assessed by it. These liens shall be superior to all other liens and shall exist in the order named and each of such liens may be enforced and foreclosed by sale for taxes as provided in this title, or as other liens upon property are enforced, except as otherwise provided by law."

"In the case of *United States v. State of Alabama*, 85 Law Edition 296, it was decided that the tax lien of the State attached on October 1, and that such lien is valid as to the entire year's taxes, notwithstanding the fact that such land may have been acquired by the Government on October 1 or any subsequent day in the tax year, although, as held in such case, the State may not institute a suit or proceeding to sell such lands for the non-payment of the taxes after title has been acquired by the Government, for the reason that the Government is not subject to suit without its consent, and such a proceeding is construed as constituting a suit against the Government." Quarterly Reports of the Attorney General, Volume 31, page 5.

A municipal corporation does not have such immunity from suit as the Federal Government. It may sue and be sued in its proper corporate name. *Powers v. Town of Decatur*, 54 Ala. 214.

The lien for ad valorem taxes for the tax year 1945 attached to the property under consideration on October 1, 1944, on which date such property was owned by the Alabama Water Service Company and is a valid lien as to the taxes due for the entire tax year 1945.

It, therefore, follows (1) that the municipalities are not entitled to an exemption from ad valorem taxes for that part of the tax year after the date they acquired the property under consideration from the Alabama Water Service Company; and (2) that you should collect ad valorem taxes for the entire year 1945.

The agreement between the Alabama Water Service Company and the municipalities to prorate the taxes for the tax year 1945 has no bearing on the question of your duty to collect said taxes for the entire tax year. Such agreement is a matter purely between the parties thereto.

I might add that if the property had been purchased by the municipalities prior to October 1, 1944, no ad valorem taxes would be due by the municipalities on the same for the tax year 1945. See Opinion to Hon. R. E. Soloman, Mayor, City of Headland, Alabama, rendered under date of January 3, 1946, a copy of which is enclosed herewith.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 9, 1946.

Hon. John T. Frazer,
Judge of Probate,
Lee County,
Opelika, Alabama.

1. Title 21, Section 746, Code of Alabama 1940, applies to cases of guardianship of incompetent veterans, and of minor children of disabled or deceased veterans only. As related to this category of cases, the probate office must furnish free copies of public records of a veteran to either the veteran or person acting in his behalf or the representative of the U. S. Veterans Bureau, when said veteran is seeking to determine eligibility to participate in benefits made available by the U. S. Veterans Bureau. When copies of public records are sought for other purposes there is no legal obligation upon the probate office to furnish same free of charge and the customary fee may be charged.

2. As to probate office, "public records" as used in Title 21, Section 746, Code of 1940, means any paper or court order which is recorded in that office.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of December 31, 1945, is as follows:

"I am being requested for copies of discharges of service men for hospitalization, to comply with the G. I. educational program, for balance of travel pay and other compensation, and most of the requests cite me to Title 21, Section 174 of the Alabama Code which provides that free copies of public records be furnished whenever requested by the bureau etc.

"I am also being requested for certified copies of marriage licenses for veterans, to be used for various purposes, free of charge.

"Please give me your opinion as to when and to whom and under what circumstances Probate Officers are to furnish these certified copies free of charge, and when to make a charge therefor."

In answering your inquiry, it is first deemed appropriate to review Title 21, Section 174, Code of Alabama 1940, which is as follows:

"Whenever a copy of any public record is required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau, the official charged with the custody

of such public record shall without charge provide the applicant for such benefits or any person acting in his behalf or the representative of such bureau with a certified copy of such record." (Emphasis supplied.)

It is noted that the above quoted section is under the general Code subject heading "Guardian and Ward" and directly under "Veterans' Guardianship." It is apparent, therefore, that evidenced legislative intent restricts the applicability of Code Section 174, supra, to this subject matter, i. e., Code Section 174 pertains to guardianship of incompetent veterans and of minor children of disabled or deceased veterans only. This legislative intent appears to be conclusively shown by the title of the Act creating this legislation of which Section 174 is a part. The Act referred to is Act No. 240 passed by the 1931 Legislature. The title specifically embraces the following: (An Act) "To provide for the guardianship of incompetent veterans and of minor children of disabled or deceased veterans, and the commitment of veterans and to make uniform the law with reference thereto ***." Therefore, any interpretation of Code Section 174 is made on the basis that applicability is limited to the above cases only, inasmuch as I find no subsequent legislation broadening the scope of its operation to other cases. With this in mind, additional factors of interpretation are herewith discussed.

As to the probate office, the phrase "public record" as used in this Section means any paper or court order which is recorded in that office. Biennial Reports of the Attorney General, 1936-1938, page 65.

As to the furnishing of copy of the above free of charge, Section 174, supra, clearly indicates this is to be done whenever same is "required by the bureau to be used in determining the eligibility of any person to participate in benefits made available by such bureau." Under this Section, if a person seeks benefits made available by the United States Veterans Bureau and he (or the Bureau) desires copies of records on file in your office to be used in determining the eligibility of such person for such benefits, then he (or the Bureau) is entitled to a free copy of any public record on file. If such records on file in your office are to be used for any other purpose other than to determine the eligibility of a veteran for benefits made available by the United States Veterans Bureau, then, under this Section, there is no legal obligation upon the probate office to furnish such person with free copies of its records on file. See Quarterly Reports, Attorney General, Volume 31, page 15.

It, therefore, appears that the determination rests upon the purpose for which said public records were sought. It is specifically pointed out that the above statute applies to "veterans," i. e., those individuals who are classified as such by reason of completion of service in the armed forces and not those currently members of the armed forces. See Quarterly Reports, Attorney General, Volume 31, page 15, quoted supra. The latter citation above discussed the applicability as applying to veterans of World War I. This applicability, in my opinion, is also extended to those "veterans" of World War II who are classified as such by reason of completion of service in World War II.

The furnishing of copies of discharges for hospitalization, to comply with the G. I. Educational Program, for balance of travel pay and other compensation that you refer to as well as copies of marriage licenses, etc., under Section 174 would, therefore, depend upon the facts in a given case as applied to the statute, the applicability of which has been outlined for you above.

I would also like to call your attention to Title 60, Section 51, Code of Alabama 1940, which is as follows:

"Any person who holds an honorable discharge from the United States Army, Navy, or Marine Corps may present the same to the probate judge of the county wherein he or she may reside, and the probate judge shall cause the same to be recorded in the book described in Section 50 of this Title, and there shall be no fee charged for this service."

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

January 9, 1946.

Hon. H. G. Dowling,

Commissioner of Revenue,

Department of Revenue,

Montgomery 2, Alabama.

Code 1940, Tit. 51, § 6—Tax Exemptions—Industrial Plants—Extensions and Additions.

The exemptions from ad valorem State taxation declared in Code 1940, Tit. 51, § 6 apply to additions, extensions and betterments costing not less than \$50.00 within any 12 months period, made to any factory, mill or plant existing on September 13, 1939, of any kind whatever. Such exemption is not confined to the types of factories, mills and plants specifically enumerated in the statute.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of January 2, 1946, is as follows:

"I am writing to request your official opinion as to the meaning of Section 6, Title 51, Code of Alabama 1940, in the following particulars:

"The first part of this section provides an exemption for certain types of factories, industries, and plants which our lawmakers considered desirable to be brought into Alabama. For instance, those industries which would involve forest products, gold, graphite, ship-building, glass, ceram-

ics, farm implements, milk products, etc., are labeled as definite projects which might be declared exempt. Extensions or additions thereto are also named as fit types for exemption.

"As deadline date is then set (September 13, 1939) and plants already erected are excluded from the possible exemption.

"This section then continues with a proviso that if after the deadline date 'any existing factory, mill, or plant, or the owner thereof' shall construct an addition or extension involving an expenditure of fifty thousand dollars or more within a year, such extension of the industry may be exempted.

"Question: Does the second part of this section apply to extensions or additions to any type of factory or industry making an extension, or does the language of the section indicate that the particular types named in the first part are also intended in the second?"

Section 6 of Title 51 of the Code of 1940, after providing for exemption from State ad valorem taxation of certain types of industrial plants, and extensions thereof and additions thereto, concludes with two provisos reading as follows:

"Provided that said exemption and remission shall not apply to property which, after September 13, 1939, constitutes any factory, mill or plant, already erected or constructed within the state. Provided, however, that if after September 13, 1939 any existing factory, mill, or plant, or the owner thereof, shall erect or construct any addition, extension or betterment, or shall complete the construction of any addition, extension or betterment whensoever begun, or shall erect or construct another or additional unit, or units, whensoever begun, to such existing factory or plant, involving an expenditure, of an amount not less than fifty thousand dollars within any twelve months period, in constructing and equipping such extension, betterment, unit or addition within the State of Alabama, including the works, machinery and all other equipment constituting a part of, or used in connection with, such extension, unit, betterment, or addition, the exemption and remittance provided for in this chapter shall apply to so much of said extension, addition or betterment, and additional units erected, constructed or completed, after September 13, 1939, including the works, machinery and other equipment constituting a part of or used in connection with the same."

These provisos are virtual copies of subdivision (c), in part, of Section 3 of the Revenue Act of 1935 (Gen. Acts 1935, pp. 256, 259, 261), as amended (Gen. Acts 1936, Ex. Sess., pp. 44, 46), and further amended (Gen. Acts 1939, pp. 529, 532, approved Sept. 13, 1939).

The obvious intent to be gathered from the verbiage used down to the beginning of the provisos was to stimulate capital investment in industrial plants of the types enumerated therein and subsequent extensions and additions, subject to the qualification stated in the first proviso that the exemption should not be extended or applied to property already subject to taxation on September 13, 1939, when the exemption statute was last amend-

ed or revised. This restriction of the exemption was only in keeping with constitutional prohibition of the release of tax liens that have already attached to property (Const. §100), and in harmony with the legislative intent to subsidize or stimulate only new investment of capital made on faith of the exemption.

The language of the second proviso is broad enough to include not only capital investment in industrial plants previously enumerated, but also capital investment of \$50,000 or more within any 12-months period after September 13, 1939, in additions, extensions or betterments to **"any existing factory, mill or plant."** The obvious purpose of restricting the exemption to investments of \$50,000 or more within a 12-months period, was a guard against exemption of mere minor additions or improvements to existing plants, and to insure that the addition or improvement should be substantial and real—and not mere replacement or upkeep.

The two provisos are, in my opinion, separate and independent, not only in form, but in content and meaning also. The object of the second proviso was to encourage new investment, not only in the enterprises specifically enumerated but also in all other then existing manufacturing or industrial enterprises of whatever type. To hold otherwise would do violence to the plain language of the statute itself and would result in an arbitrary and unreasonable discrimination against industrial enterprise other than that of the limited types referred to in the first part of the statute.

Where a statute is susceptible of two constructions, one of which would render it arbitrary, unreasonable and capricious, and the other would harmonize with an apparent general legislative policy and intent and avoid such caprice, the latter construction should prevail, in the absence of anything clearly indicating otherwise.

There is nothing in the statute, so far as I can find, to indicate an intent to restrict the exemptions therein declared to a limited class of industries. Otherwise there was no occasion to insert therein the second proviso. Otherwise the second proviso was mere surplusage and had no field of operation, because exemption of extensions and additions by the limited class had already been amply provided for in the first half of the statute.

The foregoing opinion is not in harmony with the opinion expressed in a letter to you dated November 23, 1945, which after further consideration I am persuaded was erroneous, and which is therefore withdrawn.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 10, 1946

Hon. E. B. Norton, Superintendent,

Department of Education,

Montgomery 4, Alabama.

Schools—Teachers' Tenure Act—Title 52, Section 361, Code of Alabama 1940, as amended, General Acts 1943, page 300, approved June 28, 1943, Act No. 313—Leaves of absence—Military and Naval Affairs—

Returning teacher servicemen entitled to reemployment in succeeding school year.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of December 7, 1945, is as follows:

"Act No. 313, approved June 28, 1943, amended Section 361, Title 52, Code of Alabama 1940, so as to provide leave of absence for a teacher who enters military service during time of war. Your opinion is requested on the following:

"1. If a teacher who has been granted military leave under the provisions of Act No. 313, supra, is released from military service before the end of a school year and requests immediate reinstatement, is such teacher entitled to his old position immediately or must he wait until the beginning of the succeeding school year to be reinstated? For example, if such a teacher leaves military service on January 1, 1946, and requests reinstatement in his old position immediately, is a board of education required to reinstate him immediately or does the board have the authority to defer a reinstatement until the beginning of the next school year?

"2. If the answer to question 1 is that the board of education must reinstate the teacher immediately upon his request after returning from military leave, what is the status of the teacher he replaces if such teacher is

"a. On continuing service status

"b. Not on continuing service status

"c. If the board had a written contract with such teacher for a definite number of months?"

You are advised that in the case outlined in your inquiry the returning teacher is not entitled to be reinstated immediately, but is entitled to be reinstated in his position at the beginning of the school year in the fall next succeeding the date on which said teacher is released from military service.

Act No. 313, approved June 28, 1943, General Acts 1943, page 303-304, now appearing in the 1943 Cumulative Pocket Part, Code of Alabama 1940, Title 52, Section 361, provides as follows:

"§ 361. Effect of leave of absence on continuing service status.—Leave of absence for a period not longer than one year for good cause may be granted to a teacher by the employing board of education without the impairment of the continuing service status of a teacher; **provided, however, that upon the request of a teacher who has heretofore or who shall hereafter enter the military service of the United States at a time when there is an existing state of war between the United States of America and any other country, leave of absence shall be granted to such teacher for the duration of the war and until the beginning of the school year next succeeding the date on which said teacher is released from said military service; and on or before which date, said teacher must give written notice to the employing board of education whether or not he desires to be reemployed by said board. If such notice is not received by the employing board of education, or if the teacher notifies the employing board on or before the date specified above that he does not desire reemployment, the employing board has no further responsibility with respect to reemployment of said teacher. The term 'Military service of the United States', as used herein shall include the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, the Army Specialist Corps, the Women's Army Auxiliary Corps, and the Women's Volunteer Reserve of the United States Navy, those persons commissioned in the public health service, or those persons entering into the service of any similar organization heretofore or hereafter formed by the government of the United States. A teacher entering the military service of the United States, who is not on continuing service status but who has accumulated one or more years of teaching experience with an employing board of education immediately prior to entering military service, shall be given credit for such experience with the employing board of education in attaining continuing service status, if such teacher is reemployed by said board of education within one year after the release of that teacher from military service. (Ib.; 1943, p. 303, appvd. June 28, 1943.)**" (Italics ours.)

The statute in question is too clear for construction. The leave of absence granted to a teacher under the provisions of this law is said to extend for the duration of the war and until the beginning of the school year next succeeding the date on which said teacher is released from said military service. In the example given in your inquiry the teacher is released from military service on January 1, 1946. It follows that he is entitled to be reinstated in his position at the beginning of the next succeeding school year, which occurs in September, 1946.

We believe that it was not only the intention of the Legislature to insure returning teachers who were servicemen to be reemployed, but also that school work and existing contracts should not be interrupted during the school year.

This opinion should not be construed as holding that the Board of Education cannot give immediate employment to returning servicemen if there is a vacancy or such employment is otherwise available. However, the returning teacher cannot demand employment in his former position until the beginning of the succeeding school year.

It is also incumbent upon the returning teacher to notify the board of education whether or not he desires to be reemployed by the board. This written notice should be given to the board of education on or before the date of the beginning of the school year next succeeding the date on which the teacher is released from military service.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 12, 1946.

Honorable Chauncey Sparks,
Governor of Alabama,
Capitol.

Sixteenth Section Land—
School Indemnity Lands—
Alabama Building Corporation—

The funds in the state treasury to the credit of the 16th section lands and school indemnity lands may be invested in the securities of the Alabama Building Corporation.

Opinion by the Attorney General.

Dear Sir:

Your request for an official opinion, bearing date of January 9, 1946, is as follows:

"Your official opinion is requested upon the following questions:

"1. Can the State of Alabama invest the moneys derived from 16th section lands and school indemnity lands now held in the treasury in their respective trust funds?

"2. Are the securities of Alabama Building Corporation an authorized investment for such funds?

"I request that you give this matter prompt consideration in view of the prospective immediate operation of the Alabama Building Corporation."

In the determination of the first interrogatory propounded, I deem it relevant to recite the provisions of Congressional Act of March 1827, which act provides, in pertinent part, as follows:

"That the Legislature of the State of Alabama shall be and is hereby authorized to sell and convey, in fee simple, all or any part of the lands heretofore reserved and appropriated by congress for the use of schools within said State, and to invest the money arising from the sale thereof

in some productive fund, the proceeds of which shall be forever applied, under the direction of said Legislature, for the use and support of schools within the several townships and districts of county for which they were originally reserved and set apart, and for no other use or purpose whatsoever; *** "

A compliance with the provisions of this above-quoted act was preserved in the acts, codes, and constitutions of the State of Alabama up to 1889 at which time the Legislature (Acts 1889, page 104) directed that the 16th section moneys be covered into the treasury for general purposes and pledged the payment of 6% interest thereon to the public school fund. This provision was brought forward through the 1927 school code and into the 1940 code as Title 52, Section 566 and provides as follows:

"State pledged to pay interest on school land funds.—All funds now in the treasury derived from the sale of sixteenth section or other school lands, or which may hereafter accrue from sale of such lands, together with the redemption money or other lands in which former accumulations have been invested under an act approved March 1, 1881, entitled 'An act to authorize the compromise and settlement of claims for school lands in this state,' are covered into the treasury and made available for general purposes, and the faith and credit of the state is pledged for the payment of the interest on such fund to the public schools of the state, at the rate of six percent per annum."

The provisions of the federal act granting the 16th section lands together with every expression in the constitution and laws of Alabama from 1819 to date remove any doubt as to whether or not the funds derived and accumulated from the sale, rental, or other disposition of said 16th section lands should produce an income for public school purposes.

The answer to your second query follows: An income presupposes an investment and is the fruit or gain derived from capital. **U. S. vs. Safety Car Heating and Lighting Co.**, 297 U. S. 88, 80 L. Ed. 500. An investment means the putting out of money at interest so as to produce an income; to place so that it will be safe and yield profit. **Drake vs. Crane**, 29 S. W. 990, 994, 127 Mo. 85, 27 L. R. A. 653; **Brownie Oil Company of Wisconsin, vs. Railroad Commission of Wisconsin**, 240 N. W. 827, 829; **Burkard Inv. Co. vs. U. S. C. C. A. Calif.**, 100 F. 2d 642, 645; **State vs. Hofacre**, 288 N. W. 13, 17, 206 Minn. 167; **Securities and Exchange Commission vs. Timetrust Inc.**, D. C. Cal., 28 F. Supp. 34, 39; **Union Banking Co. vs. Rogan**, 17 F. Supp. 934. The principal must not be expended or dissipated, and the funds are impressed with a trust. **Springfield vs. Quick**, 63 U. S. 56. The natural implication is for permanent safe keeping. Section 566, supra, attempted to comply with the provisions of the original grant of 16th section lands to Alabama in that it provides for a pledge of 6% of the funds received to be paid to the public schools. It would be folly to say that this was not an income, but by the same token it would be folly to interpret the money covered into the treasury for general purposes to be an investment.

Act No. 163, 1945 Legislature, provides as follows:

"Section 1. The Director of Finance is authorized and empowered, in his discretion and with the approval of the Governor, to make invest-

ments in the securities of the Alabama Building Corporation, or any other public corporation created for the purpose of constructing a State office building, of idle moneys held in the State Treasury to the credit of the Sixteenth Section Fund, the School Indemnity Land Sales Fund, the State Insurance Fund, and the Tax Token Redemption Fund. Provided, however, that investments shall be made from the State Insurance Fund only when and to the extent that the amount of funds held therein exceeds a sum equal to the total losses incurred by the State Insurance Fund in two preceding fiscal years."

In my opinion, Act No. 163, *supra*, authorizes the investment of 16th Section Fund and School Indemnity Land Sales Fund in securities of the Alabama Building Corporation. This act is in compliance with the provisions of the original grant by federal act March 1827. This act is not in conflict with Section 566, *supra*, in that the latter is not an investment. However, the 6% pledge remains untouched.

The conclusions outlined herein are fortified by the provisions in each of the State Constitutions since Alabama became a member of the Union wherein the principal of all funds arising from the sale or other disposition of lands granted by the United States for educational purposes shall be preserved inviolate and undiminished and that the income from such funds shall be faithfully applied to the specific object of the original grant.

The following authorities are cited in support of the conclusions reached herein.

Alabama Constitutions:

1819, Art. VI
1861, Art. VI
1865, Art. IV
1868, Art. XI, Sec. 10
1875, Art. XIII, Sec. 2 & 5

Alabama Codes:

1887, Sec. 957—3
1886, Sec. 1056
1896, Sec. 3658
1907, Sec. 1802
School Code 1927
Code 1940, Tit. 52, Sec. 566

Alabama Acts:

1881
1889, page 104
1945, Act Nos. 146, 147, & 163
3 U. S. Stat. at large 489
4 U. S. Stat. at large 237
Words and Phrases, Vol. 20—Income
Words and Phrases, Vol. 22—Investment

Hall vs. Blan, 227 Ala. 64; 148 So. 601
State vs. Schmidt, 61 So. 293, 232 U. S. 173
72 CJS 528—533
33 CJ 808, 809.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 16, 1946.

Mr. R. L. Hungerford,
Chief Examiner of Public Accounts,
Department of Finance,
Montgomery, Alabama.

Code 1940, Tit. 46, § 13, as amended—Acts 1943, pp. 191, 192, § 3—
State Board of Registration of Architects—

Where prior to the end of its fiscal year the State Board for Registration of Architects filed requisitions for purchases with the State Comptroller, it expended its funds on deposit in the State Treasury to the extent of the aggregate amount of such requisitions, within the purview of Code 1940, Tit. 46, § 13, as amended, and such funds, so pledged or encumbered to that extent, were not subject to transfer to the general fund, although purchase orders based on such requisitions were not issued until after the end of the fiscal year.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of November 15, 1945, is as follows:

"In connection with an examination of the accounts of the State Board for Registration of Architects, now in progress, it becomes necessary to ask that you advise me as to what constitutes an encumbrance against a fund or appropriation in the State Treasury.

"Paragraph 13, Title 46, Code of 1940, provides, among other things, that any part of the fund of the Board for Registration of Architects, 'over and above the sum of \$200.00 as shall remain unexpended at the end of each fiscal year shall be transferred to the general fund of the State of Alabama.'

"At the close of business on September 30, 1945 there was a balance of \$320.86 in such fund or \$120.86 over and above the \$200.00 authorized to be carried over into the next year.

"The Comptroller's statement as of September 30, 1945, shows the entire \$120.86 as encumbered, but in fact there was at that date only one purchase order for \$50.00 outstanding, the remainder of \$70.86 being represented only by a requisition, dated in September but under which there was no completed obligation in the form of a purchase order dated prior to the close of the fiscal year. The purchase orders under such requisition were issued and dated after October 1, 1945.

"The Board in question, through its Secretary, contends there was no unexpended balance at the close of the year, while I am firmly of the opinion that there was no encumbrance against the \$70.86, and that it should have been transferred to the general fund.

"It is my contention that an encumbrance, in the sense here used, is a binding obligation in the form of a purchase order and that a requisition is merely the expression of a desire to incur an obligation and should not be considered as an encumbrance."

From the foregoing and a memorandum prepared by you dated December 28, 1945, it appears that the Board lodged with the Comptroller on September 19 and 21, 1945, requisitions for purchases aggregating \$71.94, for which purchase orders were issued October 3 and 16.

Clearly the Board had done all that it could to effect such purchases before the end of the fiscal year, and thereby expend funds to its credit and subject to its disbursement in the State Treasury. It was due to no fault on the part of the Board that the funds were not actually expended as authorized by law, so far as appears.

Code 1940, Tit. 46, § 13, as amended (General Acts 1943, pp. 191, 192, § 3) reads in part as follows:

"The secretary of the Board shall receive and account for all moneys derived from the operation of this Chapter and all moneys received by the Board under the provisions of this Chapter shall be by the secretary certified into the treasury to the credit of the fund of the board for registration of architects, who shall keep such moneys in a separate fund to be known as the 'Fund of the Board for Registration of Architects' which fund shall be drawn against only for the purpose of this Chapter as herein provided and any part of such fund, over and above the sum of Two Hundred Dollars, as shall remain unexpended at the end of each fiscal year shall be transferred to the general fund of the State of Alabama."

There follows a detailed statement of the purposes for which the Board may expend its funds derived exclusively from fees paid to it for issue and renewal of certificates of registration, and without appropriation or supplement by the State, Acts 1943, p. 193, § 5, amending Code 1940, Tit. 46, § 15.

The words " *** any part of such fund, over and above the sum of Two Hundred Dollars, as shall remain unexpended at the end of each fiscal year," in the quoted excerpt, should not, in my opinion, be narrowly construed in such wise as to defeat the purpose of the statute or deprive the Board of the right to expend its own funds in any manner authorized by law. Inasmuch

as it had **expended**, or pledged or committed to expenditure, its funds before the end of its fiscal year, so far as it was able to do, such expenditure should not be defeated and annulled by a harsh and restricted construction of the word "unexpended." At the time the requisitions were filed it had pledged, encumbered or committed its funds to expenditure, and so far as it was concerned had expended them and appropriated them to its authorized purposes. The expenditure was made and put in process of execution, though it may not have been completed and wholly accomplished until later.

I am of opinion, therefore, that there is no basis for transfer of the \$70.86 to the general fund.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

January 17, 1946.

Hon. Eugene B. Henry,
Commissioner of Licenses,
Jefferson County,
Birmingham 3, Alabama.

**EXEMPTIONS OF MEMBERS OF THE ARMED FORCES OF
THE UNITED STATES FROM PAYMENT OF BUSINESS OR VO-
CATIONAL TAXES.**

1. The Act of the Legislature of 1945, H. B. 352, exempts a partnership from payment of business or vocational license taxes where all its members have been in the armed forces of the United States in the last World War to the extent and in the manner therein prescribed where the tax has been laid against the partnership as a legal entity.

2. If the partnership is composed of members part of whom were not in such armed forces and the tax is levied against the partnership as such then there are no rights of exemption to those serving in the armed forces of the United States.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of January 7, 1946, is as follows:

"Please advise me under Section 6, Veterans Act passed at regular session H. 352, approved July 6th, 1945, which reads in part as follows:

"No exemptions under the provisions of this act shall be allowed any corporation or association. As to partnerships, the exemption shall be allowed a partnership only when each partner thereof individually would be entitled to an exemption hereunder, etc.'

"I have an application for an exemption under this section of three partners, each having served in War and entitled to his exemption individually, but the question is would they as a partnership each be entitled to his respective share of the exemption."

Your question is limited to the right of a veteran of the armed forces of the United States in the last World War to exemptions from payment of business or occupational license taxes.

It is a well-established principle of law that the State may select the property and persons on which taxes are to be levied. This carries with it the right to exempt such property or persons as it may deem proper. There are some exceptions to this general principle, but they are not here involved. Doubtless, with this principle in mind the Legislature by the Act here involved undertook to make certain well defined exemptions on the payment of such taxes.

Section 6 of the Act here involved in legal effect provides that in cases where the tax is levied against a partnership as a legal entity and all the members comprising the partnership are persons who were in the armed forces, as named in the Act, then the partnership is exempt in the manner and to the extent provided by the statute. From this it logically follows that if the taxing law made the levy against a partnership as such and any member of the partnership was not such a veteran then there are no exemptions allowed to such partnership or any member thereof so far as the levy against the partnership is concerned.

This same section of the Act undertakes to deal with cases where the tax law is levied against the members comprising the partnership and not against the partnership as such. In this latter case each member comprising the partnership who was such member of the armed forces of the United States may claim the benefit of the exemption. It may be added as a matter of course that any member of such a partnership who never belonged to such armed forces must pay the tax levied against him. It is not necessary in this case to decide the question, but probably such civilian partner in such a case would be liable for the entire vocational tax levied.

From the foregoing it follows that where, as your letter indicates, the entire membership of the partnership is such War veterans both the partnership and all its members are entitled to the benefit of the exemption provided for in the statute.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 21, 1946.

Hon. Jas. H. Dunklin, Mayor,
City of Greenville,
Greenville, Alabama.

Code 1940, Tit. 37, § 429 (11)—

Municipal corporations—Sale or lease of property abandoned for public use.

A municipal corporation may sell or lease property no longer used for municipal or public purposes.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, bearing date of January 15, 1946, is as follows:

"The City of Greenville owns a lot and a building thereon, which was erected with public funds and which was formerly used as the City Hall, but was abandoned several years ago. It is not now being used for any municipal purposes, but with the permission of the city it is being used by the local Red Cross Unit, the War Price and Rationing Board and as a curb market for the sale and exchange of county produce.

"The act of the legislature incorporating the City of Greenville, approved March 9, 1871, provides: 'That no purchase of real or personal estate or sale or mortgage of the same, above the amount of \$1,000, made by said mayor and councilmen, shall hold good and valid without a ratification of the same by a majority of the citizens entitled to vote in said city at a special balloting held for the same.'

"I call your attention to the following provisions of the **Code of Alabama of 1940; Title 37, Section 1 and Section 429**, and request your opinion as to whether the provisions of the municipal code quoted above supersede the original act incorporating the City of Greenville so that the City Council may sell and dispose of the property without an election.

"I also call your attention to the opinion of the Supreme Court of Alabama in **City of Bessemer v. Huey**, 22 So. 2nd, 325, and request your opinion as to whether under the facts stated above the City Council of the City of Greenville would have authority to lease the property for private use not connected with municipal purposes."

The Act of August 13, 1907, (Gen. Acts 1907, p. 790), was obviously intended to bring a certain degree of uniformity into the organization and powers of then existing municipal corporations and to provide against their future organization under local acts. The Act itself concludes (§ 200, p. 892) with a provision "that all laws and parts of laws, both general and special, in conflict" therewith are repealed. The Act, in other words, was intended as a

revision of the law of municipal corporations in Alabama, and therefore operated to supplant and supersede local and special laws relating to the same subject matter, to such an extent at least as they were in conflict or at variance with the Act.

So it has been held that where a subsequent statute covers the entire subject matter of former statutes and is clearly intended as a complete substitute, the earlier statutes are repealed. **Bradford v. Carson**, 223 Ala. 594, 137 So. 426. And an Act seeking to deal fully and completely with entire subject matter of former statute takes the place of and repeals provisions of the former. **American Standard Life Ins. Co. v. State**, 226 Ala. 382, 147 So. 168.

The Act in question, as amended by subsequent legislation, has been codified as Title 37 of the Code of 1940. Section 429, subd. 11, of said Title vests management and control of the finances and property of cities and towns in the council, without restriction or limitation such as approval of the electors manifested by vote at an election.

I am of opinion therefore that the City Council may sell the property in question without an election.

From your statement of facts it appears that the property in question was abandoned as a city hall "several years ago," and is no longer "used for any municipal purposes." In other words, the property has in federal terminology become "surplus," and is subject to sale or other disposition. For that reason the case of **City of Bessemer v. Huey**, 22 So. 2d. 325, to which you refer, is without application. The decision in that case was based on the fact that the property involved was not only acquired for a municipal purpose, but was at the time being used for such purpose, and could not therefore be diverted to private use.

On the other hand, as noted in the Bessemer case, page 327, after the public use has ceased and there is no longer need of the property for public use a county (or city) governing body has implied power to divert such property to private use, by sale or lease. **Jackson v. Ball, et al**, 211 Ala. 273, 100 So. 327; **Corning, et al v. Patton**, 236 Ala. 352, 182 So. 39.

I am of opinion therefore that "under the facts stated above" the City Council of the City of Greenville is authorized to lease the property for private use.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 21, 1946.

Hon. Bradley G. Brown,

License Inspector,

Jefferson County,

Birmingham, Alabama.

Code of Alabama 1940, Title 51, Section 607.

1. The Hauling Company of Birmingham, is liable to vehicle license levied under Section 607, Title 51, Code of 1940, to the extent of the number of vehicles in excess of one that they use in transferring freight from depot to destination within the City of Birmingham, or police jurisdiction thereof.

2. Companies engaged in picking up freight within a city, or police jurisdiction thereof, for later loading and shipment are subject to vehicle license levied under Section 607, Title 51, Code of Alabama 1940, to the extent of the number of vehicles used in such operation in excess of one.

3. Vehicles used in delivering freight in City of Birmingham, or police jurisdiction thereof, which come from points without said jurisdiction are not subject to vehicle license levied under Section 607, Title 51, Code of Alabama 1940, when no "transfer" is effected within such jurisdiction.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of January 7, 1946, is as follows:

"At your earliest convenience, I will appreciate you favoring me with an official opinion on the following:

"(A). The Hauling Company operates and maintains a freight depot or warehouse in Birmingham. Railroad cars and freight lines deposit their freight in this terminal; the freight is then distributed by the Hauling Company in their fleet of trucks. It is my understanding that these vehicles, or some of them, are qualified under the Public Service Commission, as they occasionally deliver freight from Birmingham to other municipalities within Jefferson County; however, their principal distribution is confined to the City of Birmingham. Would this Company be liable for a license under Section 607, Title 51, of the Code 1940, for each vehicle in excess of one?

"(B). Many of the companies engaged in hauling freight and merchandise for hire interstate and intrastate maintain several trucks locally for picking up freight to be loaded later for shipment and for the dis-

tribution of freight that has been deposited at their terminal. Would such an operation as this be liable for license under the aforementioned Section 607?

"(C). Having been unable to find an exemption for companies such as those mentioned in question (B) of this request, presuming that those engaged in such business delivered freight direct from the vehicle in which it was brought in intrastate or interstate, would they be liable under Section 607?"

In answer to the above questions, it is deemed appropriate to first quote Section 607, Title 51, Code of Alabama 1940, which is as follows:

"Each person transferring freight, including household goods, using more than one vehicle for hire in cities or towns or in the police jurisdiction thereof shall pay a license of ten dollars for each vehicle in excess of one."

In answer to the first question raised by your letter, it is my opinion that liability for license extends to the Hauling Company on each vehicle in excess of one as relates to those vehicles used for hire in the transfer of freight within the City of Birmingham, or the police jurisdiction thereof. The fact that some of these vehicles so used also make occasional deliveries without the City of Birmingham, or the police jurisdiction thereof, does not preclude, in my opinion, the levy of the license under the meaning of the statute so long as these stated vehicles do in fact make other deliveries within said jurisdiction. Such a matter evolves into one of factual determination as to the actual use of the vehicles referred to.

The fact that some of these vehicles may, as you point out, be qualified with the Public Service Commission, in my opinion, has no bearing in the matter. As related to jurisdiction of the Commission, you will find excepted therefrom in the case of contract carriers, those "motor vehicles for hire operating within the limits of a city or incorporated town or within the police jurisdiction thereof." Code of Alabama 1940, Title 48, Section 271. Also by way of additional information, under the amount of mileage tax levied on all common carriers and contract carriers under the Motor Transportation statutes the following provisions are made: "Such mileage tax shall be paid by such common carrier or contract carrier in addition to all property, franchises, licenses or other taxes, fees and charges now or hereafter provided by law." Code of Alabama 1940, Title 48, Sections 243 and 291.

It is, therefore, my opinion that your question (A) is answered in the affirmative with applicability of the statute as outlined above.

The second question you ask in your letter relates to those companies hauling freight for hire both intrastate and interstate who maintain several trucks used locally in picking up freight deposited at terminals, said freight being loaded later for shipment and distribution. Here again, it is my opinion that Section 607 would apply. The statute appears to be clear and unambiguous in its phraseology in this regard, to-wit, "each person transferring freight, not including household goods, using more than one vehicle for hire," etc. Clearly such an operation of later loading and shipment that you mention

effects a "transfer" within the meaning of the statute. The legislative intent of the word "transfer" here, in my opinion, denotes a physical rehandling of the freight. An illustration of the definition of the "transfer" which to my mind incorporates the legislative intent found here, is set out in Webster's International Dictionary, Second Edition, page 2690, where, in referring to "transfer," the following is given by way of illustration where such is effected: "A station where freight is rehandled before proceeding to final destination."

It is, therefore, my opinion that trucks used locally as you refer to here are brought clearly within the applicability of the vehicle license levy where they are used to pick up freight at terminals for later loading and shipment.

Answer to question (B) is, therefore, in the affirmative.

Your third question relates to intrastate and interstate vehicles delivering freight directly from said vehicles at points of destination within the City of Birmingham, or the police jurisdiction thereof. It is my opinion that the statute here would not apply, assuming, of course, that by "intrastate" you mean shipments originating without the jurisdiction referred to. As noted above the legislative intent of the meaning of the word "transfer" is to be looked at in the determination of the applicability of the statute. This intent as reiterated appears to relate to the actual physical rehandling of freight. Where freight comes in from without the City of Birmingham, or the police jurisdiction thereof, and is delivered at the destination point directly from the vehicle in which it came in, there is no physical rehandling of freight such as would occur, for example, at a terminal point or station. In the absence of such fact, it is my opinion that the Legislature did not intend for the license levy to apply to such cases for the reasons previously given in interpreting the legislative intent in the use of the word "transfer."

My answer to your question (C) is, therefore, in the negative.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

January 23, 1946.

Hon. Charles W. Terry,

Director,

State Personnel Department,

Montgomery 4, Alabama.

Veterans—Merit System—Title 55, Section 305, Code of Alabama 1940.

1. A person entering the armed services of the United States after November 11, 1918, and before the peace treaty was signed is not entitled to the "veterans' preferences" provided for in Title 55, Section 305, Code of Alabama 1940.

2. A person inducted into the armed services of the United States under the Selective Service Act and discharged prior to December 8, 1941, is not entitled to the "veterans' preferences" provided for in Title 55, Section 305, Code of Alabama 1940.

3. A person inducted into the armed services of the United States after the surrender of Japan and prior to the time that World War II shall be officially declared at an end is not entitled to the "veterans' preferences" provided for in Title 55, Section 305, Code of Alabama 1940.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of January 8, 1946, is as follows:

"The question of granting veteran's preference on examinations to those men and women who served in the armed forces immediately after the Armistice, November 11, 1918, and prior to the Treaty of Versailles, June 28, 1919, or who served under the Selective Service Act prior to the Pearl Harbor attack, December 7, 1941, or after the capitulation of Japan, August 14, 1945, is a current problem with this department.

"I should like to refer you to Title 55, Chapter 9, Section 305 of the Code of Alabama and ask that you answer the following questions at your earliest opportunity:

"Is a person entitled to credit for service in the armed forces of the United States 'during a period of war',

"(1) if he entered the service after the Armistice, November 11, 1918, and prior to the Treaty of Versailles, June 18, 1919?

"(2) if he was inducted into the service under the Selective Service Act and discharged prior to December 7, 1941?

"(3) if he is inducted into the service after the surrender of Japan and prior to the time that the President or Congress shall declare the 'Duration's' end?"

The first inquiry presented by your request was answered in an opinion of this office rendered to Hon. John F. Steiner, Deputy Personnel Director, under date of November 10, 1941, found in Quarterly Report of the Attorney General, Volume 25, page 135. This opinion held "that the preference granted by Code 1940, Title 55, Section 305, ***, to persons who were honorably discharged after serving in the armed forces of the United States 'during the period of a war' does not include men who first joined the Army after the signing of the armistice, but before the peace treaty was signed."

In addition to the cases cited in the above opinion, I wish to call your attention to the more recent case of *Zinno v. Marsh, et al*, 36 N. Y. S. (2d) 866 (1942), in which the court made the following comment on the words "during the World War": "Those words have come to have a clear and common meaning in our language. They have been used commonly to describe the period beginning with our entry into World War I and ending with the armistice on November 11, 1918, and they have come to be so understood universally. *** It must be assumed that the legislature used those words in the sense in which they are naturally and ordinarily so used. The statute was designed to give a preference to those who risked their lives for their country in war time. *** "

"In the United States the power to declare War resides in Congress alone *** " 67 C. J. page 338. The second World War was declared by Congress between Japan and the United States on December 8, 1941. 55 U. S. Statutes at Large, Part I, page 795.

A person who was inducted into the service under the Selective Service Act and discharged prior to December 8, 1941, did not serve in the "armed forces of the United States during the period of a war *** ."

It, therefore, follows that your second inquiry must be answered in the negative.

Following the authorities cited in the opinion referred to in answer to your first inquiry and the case of *Zinno v. Marsh, et al*, *supra*, it is my conclusion that a person who was inducted into the armed forces of the United States "after the surrender of Japan" and prior to the time that World War II shall be officially declared at an end is not entitled to the preferences granted to persons under the provisions of Title 55, Section 305, Code of Alabama 1940, who were honorably discharged after serving in the armed services of the United States "during the period of a war."

It is, therefore, my conclusion that your third inquiry should be answered in the negative.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

January 30, 1946.

Mr. C. D. Sallade, City Clerk,

City of Fairfield,

Jefferson County,

Fairfield, Alabama.

Municipal Housing Authorities—Sales Tax—Code 1940, Title 51, Section 755(b), as amended; Title 25, Sections 5-30.

Municipal Housing Authorities are exempt from payment of sales tax for and on account of their purchases.

Opinion by Assistant Attorney General Matthews.

Dear Sir:

Your request for an official opinion, dated January 24, 1946, is as follows:

"The Fairfield Alabama Housing Authority has gotten into a wrangle with the Standard Oil Company as to the payment of sales tax for fuel oil being furnished to the Housing Authority property, the Standard Oil Company claiming that they are subject to the payment of sales tax while the Housing Authority claims that they are an arm of the municipal government and in the same category as the Board of Education and not subject to this tax.

"We are enclosing herewith two letters which we wish you would review and give us your opinion as to whether or not the Authority is subject to sales tax payments."

A municipal housing authority (Code 1940, Title 25, Sections 5-30) is an administrative agency of the municipal government exercising governmental powers and as such, under Constitution, Section 91, is exempt from property tax. In re: *Opinions of the Justices* 235 Ala. 485; 179 So. 535. It is exempt also from the deed filing tax. Quarterly Report, Attorney General, Volume 13, page 135.

Municipal corporations themselves are expressly exempt from the sales tax and their agencies likewise, in my opinion, would also be exempt from such tax. Code 1940, Title 51, Section 755(b), as amended (Acts 1943, page 435). See also *Huntsville v. Madison County*, 166 Ala. 389; 52 So. 326; *State v. City of Montgomery*, 228 Ala. 93; 151 So. 856. These cases hold that the political subdivisions of the State, such as counties, cities and towns, are exempt from taxation in the absence of express imposition by the taxing statute.

I am of opinion, therefore, that the Fairfield, Alabama, Housing Authority is under no obligation to pay sales tax for and on account of the purchase of fuel oil from Standard Oil Company.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

February 2, 1946.

Hon. John E. Mandeville, Clerk,

Circuit Court,

Mobile County,

Mobile 15, Alabama.

Code of Alabama 1940, Title 13, Section 198 (9).

Clerk of circuit court, in cases appealed from probate court, entitled to fees for preparation of final record when conforming to Title 13, Section 198 (9).

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, bearing date of January 15, 1946, is as follows:

"In Re: Final Record in Cases Appealed from Probate Court to Civil Division, Circuit Court.

"Under Title 13, Paragraph 198, of the Code of Alabama of 1940, Duties of Clerk of Circuit Court, it is provided as follows:

"'9. To record in well-bound books within six months after the final determination of any suit or prosecution, all proceedings relating thereto, not previously recorded, under Section 5 of Title 7, except the subpoenas, affidavits, for continuance, commissions to take testimony, evidence and executions.'

"I construe the above quoted section to mean that the Clerk of the Circuit Court must, in all cases filed in said court, comply with said section.

"The question has arisen in a condemnation proceeding originally filed in Probate Court, tried by said court, and appealed to the Circuit Court, Civil Division, and transcript from Probate Court of proceedings held therein filed in the circuit court, that by the Clerk of this Court following above quoted section of the Code by making final record in said cause there results a duplication of costs, as a record has already been made of same in Probate Court and a charge made therefor by said court.

"I therefore request that you give me an official opinion on the following question:

"In appeal cases from Probate Court to Civil Division, Circuit Court, such as condemnation proceedings and will contests, where the Probate Court has already made final record of all the papers and proceedings which are included in the transcript sent up to the Civil Division, Circuit

Court when such case is appealed to the Circuit Court, Is it still the mandatory duty of the Clerk of the Circuit Court to make final record of such transcript, and charge and collect the legal costs or fees for making same, as in other cases”?

It is my opinion that complete final record in the cases you illustrate would consist of the transcript of the probate court, together with the subsequent proceedings in circuit court, omitting **in each instance** those items excepted in subdivision (9) of Section 198, Title 13, as set out by that statute.

Title 13, Section 198 (9) is as follows:

(Duties of Clerk) “9. To record in well-bound books within six months after the final determination of any suit or prosecution, **all the proceedings relating thereto, not previously recorded under Section 5 of Title 7, except** the subpoenas, affidavits for continuance, commissions to take testimony, evidence and executions.”

Your final record in circuit court, whether the case originated in the circuit court or is in the circuit court on appeal from the probate court, must be prepared as provided in Title 13, Section 198, subdivision 9, *supra*. You include in your final record only those portions of the probate proceedings required by the statute for the circuit court final record.

If, in preparing the final record in the circuit court on appeal from the probate court, there is in fact a duplicate recordation of a part of the proceedings in the probate court, such duplicate recordation cannot be avoided.

The fees you are entitled to for the preparation of final record in the circuit court on a case appealed from the probate court are the same as though the case originated in the circuit court. The fact that preparation of the final record on appeal from the probate court necessitates duplication of recordation in order that you comply with the provisions of the statute does not, in my opinion, preclude the right to the fees under consideration.

It is therefore my conclusion, in specific answer to your question, that it is the duty of the clerk of the circuit court, in the cases you mentioned, to include in the final record only those recordations required by Title 13, Section 198, subdivision 9. However, if inclusion of such items results in duplication in some instances, it cannot be avoided, and you are entitled to charge and collect the regular costs and fees for recording same.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

February 2, 1946.

Hon. W. H. Holcombe, Sheriff,

Mobile County,

Mobile, Alabama.

Fugitives from justice—Extradition—Costs and fees—Title 18, U. S. C. A., Section 662—Title 15, Sections 72, 75, Code of Alabama 1940—

State requesting extradition of fugitive must pay costs, fees and expenses incurred.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of January 17, 1946, is as follows:

"On various occasions officers from other states come to Mobile to obtain fugitives from those states, which fugitives have been arrested and are in Mobile County jail. Before releasing these fugitives we always require payment of all fees and costs allowed under Section 100, Title 11, Section 145, Title 45, etc., of the Code of Alabama.

"Some of these officers come from states which do not require officers from Alabama to pay fees and costs before obtaining fugitives held in their jails for officers in the State of Alabama. Objection is sometimes raised to paying such fees and costs by the officers from states which do not charge such fees and costs to officers from the State of Alabama.

"Will you kindly advise us whether it is necessary for us to charge law enforcement officers the fees and costs allowed under the statutes of Alabama before obtaining fugitives held in the Mobile County jail when the officers are from states which do not make such charges to officers from the State of Alabama. This office is on a salary basis."

You are advised that you should charge out-of-state officers or transfer agents the fees and costs incurred in arresting and holding their prisoners. Title 18, Section 662, United States Code Annotated, provides as follows:

"Sec. 662. **Fugitives from State or Territory.**—Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, it shall be the duty of the executive authority of the State or Territory to which such person has fled to cause him to be arrested and secured, and to cause notice of the arrest to be given to the executive authority making such demand, or to the agent of such authority appointed to receive the

fugitive, and to cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within six months from the time of the arrest, the prisoner may be discharged. **All costs or expenses incurred in the apprehending, securing, and transmitting such fugitive to the State or Territory making such demand, shall be paid by such State or Territory.**" (Emphasis ours.)

It is apparent therefore that the officer from the state demanding the return of a fugitive should pay the costs and expenses incident to the apprehending, securing and transmitting of the fugitive. It is our opinion that you may hold the fugitive until such costs and fees are paid.

You are further advised that we know of no reciprocal agreements with other states whereby Alabama fugitives are released without payment of costs and fees. On the contrary, our laws provide for the payment of such fees to out-of-state authorities. See Title 15, Sections 72 and 75, Code of Alabama 1940.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

February 5, 1946.

Hon. David E. Dunn, President,
Board of City Commissioners,
Montgomery County,
Montgomery, Alabama.

1. When the owner of a motor vehicle is an individual he should assess the motor vehicle for ad valorem taxes with the tax assessor of the county in which such owner presently resides and pay such tax to the tax collector of such county and obtain from the probate judge of such county the license tag.

2. The county in which the owner presently resides is the county where license tag should be obtained and ad valorem taxes paid if such owner is an individual.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of October 6, 1945, is as follows:

"Re: Title 51, Section 704, Code of Alabama 1940, as amended by House Bill 357, Act 314, 1945 Legislature.

"The City of Montgomery and the Board of Revenue of Montgomery desire a ruling from you as to an interpretation of a part of Section 704, Title 51, of the Code of Alabama of 1940, as amended. The second sentence of said section reads in part as follows:

" 'Every person, firm or corporation, who desires to operate a motor vehicle on the public highways of Alabama shall first return such motor vehicle for ad valorem taxation to the tax assessor of the county in which he resides' for the preceding tax year *** ' (underscoring ours).

"We would like an interpretation of the underscored phrase in its setting in said section.

A review of the history of the law embodied in Section 704 of Title 51, as amended, will help in interpreting or construing the phrase "in which he resides," as it is used in said section of the Code.

Prior to October 1, 1923, the ad valorem tax on automobiles was assessed and collected in the same manner as the ad valorem tax on other personal property. By Act of the Legislature, approved on September 13, 1923 (General Acts Alabama, 1923, page 288, section 19), the procedure for the assessment and collection of the ad valorem tax on motor vehicles was changed. This Act itself discloses that the procedure provided by it for the collection of said tax was desirable or necessary in order to prevent motor vehicles from escaping ad valorem taxation. It is also evident from such Act that the Legislature intended to make a change in the manner motor vehicles should be assessed for ad valorem taxation. By Section 19 of said Act it was provided that:

" *** on and after the first day of October, 1923, no license shall be issued to operate a motor vehicle on the public highways of this State, nor shall any transfer be made by the probate judge as provided under this Act, until the ad valorem tax on such vehicle shall have been paid in the county for the preceding year, as evidenced by a receipt of the tax collector where the owner of said vehicle resides, if the vehicle is owned by an individual, and if the motor vehicle is owned by a firm, corporation or association, then as evidenced by the receipt of the tax collector in which such motor vehicle is used or operated; provided that this section shall not apply to motor vehicles owned by dealers, the State, counties and municipalities. On and after the first day of October, 1923, every person, firm, or corporation who desires to operate a motor vehicle on the public highways of Alabama shall first return such motor vehicle for ad valorem taxation to the tax assessor of the county in which he resides, for the preceding tax year, and the tax assessor of such county shall deliver to such person who makes the return as herein required a certificate of assessment on a form prescribed by the State Tax Commission, and such certificate shall be the warrant of the tax collector to collect the tax as shown thereon. (b) If any motor vehicle has already been returned for the fiscal year beginning October 1st, 1922, and ending September 30th, 1923, the tax assessor shall issue a certificate showing the valuation of such motor vehicle, and the tax collector shall collect the taxes according to such valuation, and credit same upon the collector's abstract as part payment. (c) After the first day of October, 1923,

motor vehicles within the meaning of this Act, shall not be included in any assessment made by any person, firm or corporation as of the first day of October, 1923, or subsequent years; and such motor vehicles shall not be considered as escaped property by reason of failure to include same in any property return as of the first day of October, 1923, or any subsequent year, but shall be assessed as herein provided. (d) The judge of probate upon issuing a license as herein provided shall require the applicant to surrender the receipt of the tax collector and keep same on file in his office. The license tag shall be evidence of the payment of the license and ad valorem tax due as provided under this Act. Valuation for ad valorem assessment shall be sixty percent of the fair and reasonable value of same. (e) Motor vehicles brought into this state after the first day of October and before the tax assessor has completed his assessment shall be subject to taxation the same as if it had been held or owned in the state on the first day of October. (e 1) The probate judge is authorized to issue a motor vehicle license upon a certificate of the tax assessor certifying that there is no ad valorem taxes on said motor vehicle for the preceding year. *** "

The pertinent provisions of this 1923 Act were reenacted in the General Revenue Bill of 1927 (General Acts of Alabama 1927, page 139, section 18) and also in the Revenue Act of 1935 (General Acts 1935, Regular Session, page 256, section 348, Schedule 158.12). The appropriate section (Section 348, Schedule 158.12) as contained in the 1935 Revenue Act is substantially the same as that contained in the 1923 and 1927 Acts, although subsections (b) and (c) of the 1923 and 1927 Acts are omitted. However, it is evident that the omission of these subsections from the 1935 Act is immaterial because such subsections became functus officio after the year 1923. In other words, they had fulfilled their mission as worded.

Schedule 158.12 of said section 348 is brought forward from the 1935 Revenue Act into the 1940 Code without change as Section 704 of Title 51, and the 1945 amendment of said Section 704 reenacts, without change, said Section 704, adding at the end thereof an additional sentence which is not here pertinent.

The legislative Act of 1923, and pertinent subsequent legislation, in my opinion, places motor vehicles in a class to themselves, with reference to their assessment for ad valorem taxes and the collection of such taxes thereon. Section 704 of Title 51 of the 1940 Code directs where such taxes are to be assessed, and to whom paid. This section provides that:

"Every person, firm or corporation, who desires to operate a motor vehicle on the public highways of Alabama shall first return such motor vehicle for ad valorem taxation to the tax assessor of the county in which he resides, for the preceding tax year, and the tax assessor of such county shall deliver to such person who makes the return as herein required, a certificate of assessment on a form prescribed by the department of revenue, and such certificate shall be the warrant of the tax collector to collect the tax as shown thereon."

This section further provides that if the owner is an individual the license issues upon the production by him of a receipt from the tax collector of the county where the owner resides to the effect that the ad valorem taxes

have been paid for the preceding year, if any are due. If no taxes are due the probate judge is authorized to issue a motor vehicle license upon a certificate of the tax assessor certifying that there is no ad valorem tax on said motor vehicle due for the preceding year. If the owner is a firm, corporation or association the license is issued upon the production of a receipt from the tax collector of the county in which said motor vehicle is used or operated.

Considering the history of this law and the purpose for the change in the same brought about by the 1923 Act, it is my opinion that the phrase, "in which he resides," as it is used in said Section 704, means the county in which the owner presently resides as distinguished from the county he may claim as his legal residence or permanent home. Therefore, if an owner of a motor vehicle who is an individual claims Elmore County as his permanent home or legal residence, and such owner is presently residing in Montgomery County his motor vehicle should be assessed in Montgomery County, and the ad valorem tax paid in Montgomery County, and his tag purchased from the probate judge of Montgomery County.

The following opinions of the Attorney General sustain the holding enunciated in this opinion:

Biennial Report of Attorney General, 1928-30, page 463;

Biennial Report of Attorney General, 1932-34, page 428.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

February 7, 1946.

Mr. Lawrence A. May,

First Assistant,

State Service Commissioner,

Department of Veterans' Affairs,

Montgomery 2, Alabama.

ELECTIONS

QUALIFICATIONS OF ELECTORS

1. No person is entitled to vote in a general or a primary election unless at the time of voting he possesses all the stated qualifications prescribed by the Constitution of this State.

2. The provisions in Section 181 of the State Constitution of 1901 authorizing persons to register before completion of the period of time of residence required if such period of residence will have expired at the date of the next general election does not authorize such regis-

trant to vote in either a general or a primary election prior to the date of the completion of the period of residence required.

3. The constitutional provisions authorizing registration prior to date of expiration of time required for residence does not in any way change or modify any of the other constitutional qualifications to vote. They must exist at the time of voting.

4. The constitutional provision of Section 181 authorizing registration prior to expiration of the length of time of residence required does not entitle such a registrant to vote in the primary election on May 7, 1946.

5. The Constitution and the statutes make it mandatory that persons offering to vote must at the time possess all the qualifications required, but neither the Constitution nor the statute requires that his name must appear on the registration list as a prerequisite to voting.

6. The registration list furnished the inspectors constitutes satisfactory evidence of the qualifications of a voter, but absence of the voter's name thereon does not preclude the right of the voter to show by other evidence that he is in fact a registered voter. The registration list constitutes evidence of registration, but it is not the exclusive method of proving registration.

7. The registration certificate issued to the registrant, if shown to be valid, is sufficient to show that he is a registered voter.

8. If a person offering to vote, duly registered, but registered too late for his name to appear on the list furnished the inspectors, he may nevertheless vote by making proof that he has actually and duly registered.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, dated 30 January 1946, is as follows:

"It is requested by this department that you render an opinion covering the following:

"It is assumed by the writer that veterans, due to the fact that they are exempted from payment of poll tax in Alabama, can register to vote on the first and third Mondays in February, and be permitted to vote in the May primaries, but there seems to be some indecision in certain counties in the state with reference to this, and I would appreciate that the answer be included in this requested opinion.

"The second question is whether or not veterans in the state may register on the first and third Mondays in March and April and still be permitted to vote in the May Primaries. It appears to me that this also

would be permissible even though the registration lists will be prepared by the Probate Judge in February. Even with such veterans not being on these lists, they could show their registration certificates at the polls.

"We would appreciate a prompt opinion on the above, and request that it be given a state-wide publicity through the medium of the Associated Press before the end of this week, as the Registration Boards will meet next Monday."

We are in receipt of your letter of January 30, 1946, concerning the rights of veterans to register and vote in the May primary.

Your letter carries implications that call for consideration of other matters necessarily involved in considering the subject presented and we will deal with it in that light.

The right, or more correctly speaking, the privilege, to vote in elections has its origin in the Constitution of the State. The right to vote as is guaranteed is securely hedged about by numerous conditions which form a part of the right. It has in unambiguous and mandatory language stated who are entitled to vote in elections, both general and primary.

We now notice these constitutional provisions applicable to the questions you have posed.

To be entitled to vote a person must have been a resident citizen of the state for two years, of the county for one year, and of the precinct or ward three months immediately preceding the election at which he offers to vote; he must be twenty-one years old or more and at the time have paid all poll tax due on or before the first day of February preceding. **Constitution of Alabama of 1901**, Sections 177 and 178. Under constitutional authority the legislature has required these same provisions.

Legally these provisions have the effect of forbidding anyone who does not have these prescribed qualifications the right to vote, but the Constitution emphasized these provisions and set the matter at rest by the provisions of Section 184 of the Constitution, where it is stated that no person not registered and qualified as an elector under the prescribed sections shall vote at any general election, state, county or municipal.

So far we have been considering qualifications required to entitle a person to vote, one of which is that he must be registered. Section 186 of the Constitution furnishes a procedure for registration. It authorizes the legislature to enact laws therefor. In obedience to this constitutional requirement the legislature passed laws on the subject which are codified in the Code of Alabama 1940, Title 17, Sections 21-56. Provisions herein are made for the appointment of a board of registrars and Sections 26 and 27 provide the manner and time for registration. These sections, however, have been amended by the Acts of the Legislature of 1943, pages 233, 234, and 560. All these provisions have been materially changed by Act No. 346, H. B. 250, of the Acts of the Legislature of 1945.

In your letter you seem to be under the impression that this Act applies only to veterans, but the Act specifically provides that it applies to all other persons qualified to vote. Under Title 17, Section 29, the registrars are required to issue to persons registered a certificate of registration and Section 54 of this title requires the registrars to file a list of the names of persons registered with the probate judge. We will consider some of these provisions further on. So far we have been discussing the qualifications of voters participating in general elections.

PRIMARY ELECTIONS

The Constitution, Section 183, says that no person shall be qualified to vote and participate in any primary election, party convention, etc., who shall not possess the qualifications prescribed by this article for electors or who shall be disqualified from voting under the provisions of the Constitution. Code, Title 17, Sections 336-412, elaborately deals with primary elections. Section 339 herein requires that the election shall be held and conducted under the provisions of law controlling general elections. On the question of qualifications of voters Section 347 provides that all persons who are qualified under the general laws of the state, with certain qualifications not here pertinent, are entitled to vote.

REGISTRATION

While the Constitution and the state laws make registration one of the necessary qualifications to voting, its undoubted purpose is to provide written evidence of the qualification of the persons entitled to vote.

The Constitution simply requires registration, but makes no attempt to fix the time or manner of the registration or provide a memorial thereof other than that it must have been done at the time of the election. It leaves all this to the legislature and it has passed laws on that subject as noted above.

Sections 26 and 27 of Title 17 of the Code, as we have noted, have been amended by the Acts of the Legislature of 1943. Under the amendment of Section 26 the registrars must visit each precinct in 1939 and each two years thereafter between October 1 and December 31 for the purpose of registering voters. Acts of 1943, page 233.

The Legislature of 1943 also passed a law making no reference to Sections 26 and 27, of Title 17, or the Act of 1943, page 233, which makes certain changes in counties having a named population. Acts 1943, page 187. We will not undertake the consideration of the provisions of this act because it does not appear necessary for the purposes of this opinion.

Section 27 of Title 17, of the Code, has been amended by Acts of the Legislature of 1943, page 334, vesting authority in county commissioners or boards of revenue to open the registration books for registration during named periods, but we do not deem it necessary to discuss its provisions here.

We now come to the Act of the Legislature of 1945, No. 346, H. B. 250, referred to in your letter. This Act, while laying stress on persons in the armed forces of the United States or affiliated organizations therein, further provides that "all other persons otherwise qualified under the laws of the

state" shall be registered. This act requires the board of registrars to be in session for registration on the first and third Mondays in each month. This act certainly broadens the time for registration. Under it qualified persons may register on Monday, May 6, 1946.

The prime question, Is the person so registered qualified to vote the next day in the primary?

This question requires a discussion of our statutes in connection with the cited sections of our Constitution. Title 17, Section 54, of the Code, requires the registrars to file with the probate judge the registration list made by them. This must be done within two weeks after expiration of time prescribed for registration. Section 138, Title 17, requires the probate judge to deliver to the election inspectors at each voting place **immediately** preceding each election a list of the registered voters.

In the primary election the probate judge must furnish to the officers of the election a copy of the official list of voters of the same kind and in the same manner as in general state elections. This provision fixes the time for delivery as being the same as that in general elections, and in general elections the probate judge is required to furnish the list immediately preceding the election so he must do the same in primary elections. Title 17, Section 138, Code of 1940.

In the latter part of Section 1 of the Act of 1943, page 334, it is provided:

" *** Any voters who may become qualified after a qualified voting list has been made and published as now provided for by law during even numbered years may be added to the list of qualified voters by a supplementary list or lists without making a complete new list of qualified voters."

It appears that this supplementary list may be made anytime before the date of the election, or as to that matter at the time of opening the polls on the day of election.

It is reasonably clear that if the name of the party offering to vote is on this supplemental list prima facie he would be entitled to vote in the primary election May 7, 1946.

It must be kept in mind that all these provisions of law as to lists of registered voters and the delivery of the same to the election officials are procedural and give the official seal to their verity and furnish prima facie evidence of the qualifications of voters. Both the Constitution and the statutes provide that if the person offering to vote possesses all the named conditions at the time he offers to vote he is guaranteed the right to cast it. Neither the Constitution nor the statute requires as a right to vote that his name shall appear on the official list of qualified voters. If he has actually lawfully registered but his name fails to appear on the list of registered voters he may make proof of the fact that he has actually and lawfully registered. This may be done just as any material fact may be shown in a judicial proceeding. If he produces his certificate of registration issued to him by the board of registrars, which is shown to be genuine, this is official prima facie evidence to entitle him to vote. The statute providing for the registration list

to be furnished to the inspectors is not an exclusive method of showing the voters' qualification.

Some confusion seems to be in the minds of officials with reference to the construction of Section 181 of the Constitution. This section provides that after the first day of January, 1903, persons whose residence shall have remained unchanged will have at the time of the next general election the qualifications as to residence prescribed in Section 178 of the Constitution shall be qualified to register. This section is dealing with but one of the qualifications to vote—registration. It does not give the right to vote prior to the date of the expiration of the required time of residence; it simply allows him to register if such time will have expired by the next general election. He is armed with the right to vote when that time arises and not before. The fact that a person has registered under these constitutional provisions does not authorize him to vote unless at the time of voting he possesses all the other named qualifications in the Constitution. This is made clear in Sections 177 and 178 of the Constitution, and this is true in primary elections. Constitution, Section 183.

The sections of the Constitution, with which we have been dealing, are largely affirmative qualifications. We have not been unmindful of the negative qualifications required by the Constitution. These are catalogued in Section 182 of the Constitution and they are as necessary to entitle a person to vote as are the other sections noted.

CONCLUSION

From the premises herein set forth we conclude:

1. No person is entitled to vote in a general or a primary election unless at the time of voting he possesses all the stated qualifications prescribed by the Constitution of this state.
2. The provisions in Section 181 of the State Constitution of 1901 authorizing persons to register before completion of the period of time of residence required if such period of residence will have expired at the date of the next general election does not authorize such registrant to vote in either a general or a primary election prior to the date of the completion of the period of residence required.
3. The constitutional provisions authorizing registration prior to date of expiration of time required for residence does not in any way change or modify any of the other constitutional qualifications to vote. They must exist at the time of voting.
4. The constitutional provision of Section 181 authorizing registration prior to expiration of the length of time of residence required does not entitle such a registrant to vote in the primary election on May 7, 1946.
5. The Constitution and the statutes make it mandatory that persons offering to vote must at the time possess all the qualifications required, but neither the Constitution nor the statute requires that his name must appear on the registration list as a prerequisite to voting.

6. The registration list furnished the inspectors constitutes satisfactory evidence of the qualifications of a voter, but absence of the voter's name thereon does not preclude the right of the voter to show by other evidence that he is in fact a registered voter. The registration list constitutes evidence of registration, but it is not the exclusive method of proving registration.

7. The registration certificate issued to the registrant, if shown to be valid, is sufficient to show that he is a registered voter.

8. If a person offering to vote, duly registered, but registered too late for his name to appear on the list furnished the inspectors, he may nevertheless vote by making proof that he has actually and duly registered.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

February 7, 1946.

Mr. C. L. Rowe, Attorney,

City of Elba,

Coffee County,

Elba, Alabama,

Constitution of 1901, Section 93—Acts 210, 211 and 287, General Acts 1945.

1. Legislature may enact legislation in anticipation of constitutional restrictions being removed, when the effective operating date provides for such a contingency.

2. Section 93 of the Constitution of 1901 inhibits only the State as an entity distinct, and has no application to municipalities and counties acting on authority given by the legislature.

Opinion by Assistant Attorney General Gallion.

Dear Sir:

Your request for an official opinion, dated January 23, 1946, is as follows:

"Reference is made to Acts Numbers 211, S. 107; 287, S. 22; and 210, S. 106; all of the regular session of 1945.

"Your attention is particularly invited to Sections 9, 12 and 13 of Act No. 211, supra.

"The governing body of the City of Elba, requests your opinion on the following question:

"1. Are the provisions of the above acts relating to the powers of local governing bodies to cooperate with the State Board of Health in and about the acquisition, construction, establishment, maintenance and operation of a hospital, as therein provided, contingent upon the outcome of the election upon the proposed constitutional amendment provided for by Act No. 210, supra?"

The Acts you refer to above, namely, Acts 210, 211, and 287 of General Acts 1945, evidence the broad legislative intent to revise the existing hospital and health facilities afforded throughout the State. The underlying purpose appears to lie in a plan for reorganization, wherein the State, functioning through the State Board of Health and an advisory council, will create a master hospital plan subdividing the State into various regions, districts and zones.

A program of construction, building and equipment improvements, and an overall plan for integration of the hospital system in the State is apparent. Liberal State assistance to local hospitals and associations is contemplated as indicated from the provisions of Acts 211 and 287. The avowed purpose of Act 211 is to afford adequate facilities for the treatment of all types of diseases in a comprehensive State program.

Acts 210 and 211 were companion bills in the Legislature and Act 287 is related in point. Incorporated in these Acts are provisions for State entry into this field of activity.

By Section 93 of the Constitution of 1901, the State is now precluded from such activity. Section 93 is as follows:

"Sec. 93. The state shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the state be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation."

Various constitutional amendments have been made to this section of the Constitution affording the State the opportunity of participating in certain fields of operation. (Public Roads, Amendment I; Road Bond Issues, Amendment XI; Mobile Port, Amendment XII; and State Roads, Highways and Bridges, Amendment XXI.)

Act 210 specifically proposes a constitutional amendment to Section 93 in order to allow the State's entry into such activity outlined here. The validity of State participation is therefore dependent on a favorable vote on the constitutional amendment in the forthcoming general election—the time which the Act has fixed for voting on the amendment.

Therefore, the validity of Act 211, insofar as it touches upon State participation in the field before us, is contingent upon the constitutional amendment being favorably voted upon. The same is true of Act 287.

It is noted that the Governor has already approved both Acts and both will, therefore, be effective in entirety upon the fulfillment of the contingency,

i.e., a favorable vote on the constitutional amendment which allows State participation.

The phraseology contained in both Acts in their respective effective date clauses, to-wit, "or its otherwise becoming a law," in my opinion, is the basis for this construction. That such legislation in anticipation of a removal of a constitutional restriction can be legally enacted appears to have been settled by the Supreme Court in their conclusions reached in "In re Opinions of the Justices," 227 Ala. 291, and cases cited thereunder.

An excerpt from the above is as follows:

"Legislature is authorized to enact regulatory and enabling provisions to become effective when constitutional amendment removes existing restrictions and in anticipation of such amendment."

See also **Downs v. City of Birmingham**, 240 Ala. 184.

Relative to Section 93 of the Constitution of 1901, cases on point have held that the inhibitions apply only to the State as an entity distinct, and in no sense places limitations upon the power of the Legislature to grant authority to **municipalities** and **counties** in a field such as is here before us. See **Sheppard v. Dowling**, 127 Ala. 1, 28 So. 791; **Ex Parte Selma & Gulf Railroad Co.**, 45 Ala. 696. Therefore, where the Acts mentioned are divisible on those matters of local aspect and State participation is not directly involved, it is my opinion that said features are now already law and local action may be taken thereon. However, it is noted that the majority of references to local application in both Acts are so closely interwoven with State participation that the more salient features must necessarily await application until the time, when and if, the constitutional amendment is passed. Thus, while local application on those matters not directly involving the State can now be undertaken, it appears that from a practical standpoint, in most instances the effective application of the Acts depends on the contingency of the constitutional restrictions relating to State participation being removed.

In conclusion, it is my opinion that (1) those provisions involving State participation in this field of operation are contingent upon a favorable vote on the proposed constitutional amendment, and (2) those provisions of strictly local aspect became effective upon approval of the Acts under consideration by the Governor.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

February 25, 1946.

Hon. Frank O. Deese,

Judge of Probate,

Dale County,

Ozark, Alabama.

Court of County Commissioners—Sec. 207, Title 52, Code 1940—
Sec. 555, Title 52, Code 1940—Sec. 12, Title 12, Code 1940 as amended
by Act 1945.

Appropriation by court of county commissioners to county board
of education to assist in the erection of a concrete stadium authorized.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion, bearing date of February 11, 1946,
is as follows:

"The Court of County Commissioners of Dale County desires to know
if it has legal authority under the laws of Alabama to make an appropri-
ation for the construction of a concrete stadium to be built on the County
High School grounds for the use of the students in the school football,
baseball and basketball games. As we understand it, Section 1, Acts of
1931, page 687, authorizes an appropriation of county funds to any public
school for specific school purposes to be decided upon by the county gov-
erning body.

"The Act of the Legislature, approved July 6, 1945, amending Title
12, Section 12, Code of Alabama, of 1940, authorizes the expenditure by
the Court of County Commissioners of any necessary sums of money for
the improvement, beautification or decoration of the grounds, campus or
premises of any county school or schools under the control of Boards of
Education in such County.

"The ground upon which this concrete stadium is to be erected be-
longs to the County School System and is under the control of the County
Board of Education, and the school grounds are now used for school ath-
letic contests. The purpose of this appropriation is to assist in the erec-
tion of a concrete stadium on said grounds.

"Under an opinion rendered by the Attorney General, dated October
6, 1936, to Hon. George W. Andrews, Circuit Solicitor, the Attorney Gen-
eral held that the Court of County Commissioners was authorized to
make an appropriation for the purchase of athletic equipment for phy-
sical training of students in the schools. It appears to me that it is as
equally appropriate for the County to make a donation for the erection
of a concrete stadium, a permanent structure, on school grounds for the
use of the school in its activities.

"Please give me an opinion at your early convenience as to whether or not the Court of County Commissioners can make this appropriation."

Although not stated in your inquiry, it is assumed that the appropriation in question is to be made to the county board of education to be used by said body to assist in the erection of a concrete stadium on grounds belonging to the county school system and under the control of the county board of education. (See Constitution 1901, Art. IV, Sec. 94). The following opinion is based on this assumption being correct.

Before the court of county commissioners or other similar county governing body can appropriate money for any purpose whatsoever, it must be able to point to some statute expressly or impliedly authorizing such payment. Whatever power such court has is derived from legislation. Such court has no inherent or constitutional power. *State v. Street, et al*, 117 Ala. 203, 23 So. 807.

Therefore, specific or implied authority for the appropriation in question must be found in the Alabama Code or some act of the legislature passed since the adoption of the 1940 Code.

Section 207, Title 52, Code of Alabama (Sec. 1 of Acts 1931, page 687) provides:

"Appropriation of funds out of county treasury.—The courts of county commissioners or boards of revenue of the several counties of Alabama are authorized at any meeting of said court in any calendar year to appropriate any funds they may deem proper and expedient out of the general funds of the county treasury for the support of the public schools within said county."

In a former opinion from this office, Biennial Report of the Attorney General, 1930,-32, page 507, it was stated that the above quoted section authorizing the county to appropriate funds "for the support of the public schools" does not contemplate appropriations for erection, repair, and equipment of public schools, but only to aid in the conduct of them as already existent, running institutions. However, this opinion was in effect overruled by a more recent opinion wherein it was stated that an appropriation of money by the court of county commissioners from the general fund of the county to the county board of education to be used for the purpose of improving the interior lighting facilities in public school buildings is authorized, such appropriations being for the "support of the public schools." (Quarterly Report Attorney General, Vol. 40, page 9).

Physical education of students in the public schools of Alabama is a recognized and required part of their curricula. Sec. 555, Title 52, Code of 1940 provides:

"Every public school and private or parochial school shall carry out a system of physical education, the character of which shall conform to the program or course authorized by the department of education."

In an opinion to Hon. George W. Andrews, Circuit Solicitor, Third Judicial Circuit, Union Springs, Alabama, (Quarterly Report Attorney General,

Vol. 5, page 5) it was stated that an appropriation for the procurement of athletic equipment in furtherance of a course of physical training in a public school is "for the support of the public schools" within the meaning of Sec. 207, Title 52, quoted supra.

In addition to Sec. 207, Title 52, Code of 1940, the 1945 legislature passed an act amending Section 12, Title 12, Code of 1940. The pertinent provision of this act is as follows:

"Sec. 12, Authority of the court.—The Court has authority: 24. To use convict labor, and any county equipment or machinery or expend any necessary sum of money for the improvement, beautification, or decoration of the grounds, campus or premises of any county school or schools under the control of boards of education in such counties."

I am unable to find any opinions from this office or appellate court decisions dealing with the above quoted section.

Considering the fact that Section 555, Title 52, Code of 1940, requires the carrying out of a system of physical education in every public school and private or parochial school, and that Section 207, Title 52, Code of 1940, authorizes the expenditure of county funds for the **support** of public schools within said county, and the further fact that Section 12, Title 12, as amended by Act 1945, authorizes the expenditure of any necessary sum of money for the improvement, beautification, or decoration of the grounds, campus or premises of any county school or schools under the control of boards of education in such counties, it is my opinion that the Court of County Commissioners of Dale County has the legal authority to make an appropriation to the county board of education to assist in the erection of a concrete stadium on grounds belonging to the county school system and under the control of the county board of education.

Such appropriation to be used for the purpose stated is, in my opinion, for the "support of the public schools" within the meaning of Section 207, Title 52, quoted supra, for the "improvement of the grounds, campus, or premises" of the county school within the meaning of Section 12, Title 12, subdivision 24, Acts 1945, and for the purpose of promoting the physical education program of the school.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 1, 1946.

Miss Sybil Pool,

Secretary of State,

State of Alabama,

Montgomery, Alabama.

Corporations—

1. Under facts stated the filing by Alabama Mineral Land Company of its original incorporation papers in 16 counties had the effect of bringing into being only one corporation.

2. The several renewals of its charter filed by the Alabama Mineral Land Company held effective to continue the existence of the corporation.

Opinion by the Attorney General.

Dear Miss Pool:

Your request for an official opinion, bearing date of February 25, 1946, is as follows:

"Please give me your official opinion as to the proper answers to the questions herein asked, upon the following state of facts:

"State of Facts:

"The Alabama Mineral Land Company was organized in 1883.

"The Declaration of Incorporation recites the sale of certain lands granted by Congress to the State of Alabama for the use of the Selma, Rome and Dalton Railroad Company and by the State granted to the Alabama and Tennessee Rivers Railroad Company and to the Selma, Rome and Dalton Railroad Company, together with claims and contracts and other properties, under Court decree, to parties named Randolph and Cadwalader; That said parties were acting as the representatives of the incorporators; That incorporators desired to form a corporation to own, develop and sell said lands and other lands, claims and rights.

"Further, the declaration recites the formation of a corporation, in the following language:

" ' We do hereby constitute ourselves a body politic and corporate, under and in accordance with the provisions of the Constitution and Laws of Alabama, including sections 1937, 1938, 1939 and 1940 of the Code of Alabama, commonly called the "Code of Alabama of 1876" *** ' "

"for the purpose of owning, improving, managing, developing and selling such lands and other lands as required,

"and of exercising such other rights and powers in relation to all the property, real estate, claims, rights and interest hereinabove referred to, as are not inconsistent with the Constitution and Laws of the State of Alabama;'

"That the name shall be the Alabama Mineral Land Company; That the capital stock shall be one million dollars, ten thousand shares par value one hundred dollars each; That the entire capital stock to be issued to incorporators for the land conveyed.

"The incorporators are listed as

Names	Residence	No. of Shares
Edmond D. Randolph	City of New York, N. Y.	1667
William Henry Woods	City of New York, N. Y.	1667
Richard T. Wilson	City of New York, N. Y.	1667
John J. Crane	City of New York, N. Y.	1667
William A. Paton	City of New York, N. Y.	1666
Daniel S. Appleton	City of New York, N. Y.	1666

"The home office and chief place of business is stated as at Birmingham, which can be changed by vote of the stockholders; There are provisions for voting and meetings. The directors and officers are provided for.

"The date given is May 14, 1883, and the place New York City.

"The declaration was written and signed in triplicate original, and all three copies were forwarded to Alabama for filing. They were filed in sixteen Alabama counties, being the counties in which the lands lay, as follows: Perry, June 4, 1883; Dallas, June 4, 1883; Shelby, June 5, 1883; Bibb, June 6, 1883; Talladega, June 9, 1883; Calhoun, June 12, 1883; Etowah, June 12, 1883; Cleburne, June 15, 1883; Cherokee, June 16, 1883; St. Clair, June 16, 1883; Randolph, June 16, 1883; Autauga, June 16, 1883; Coosa, June 16, 1883; Clay, June 18, 1883; and Jefferson July 2nd, 1883.

"No county of incorporation was specified. Birmingham was described as the 'home office and chief place of business'; no duration was set out in the charter.

"The corporation has been actively engaged in business, consisting of buying and selling lands, mining, and leasing and otherwise utilizing and developing lands, since that date, with duly elected directors and officers; the head office was maintained in Jefferson County for a short time, then moved to Anniston, then to Montgomery, back to Anniston, and in about 1924 or 1925 moved to Birmingham, again.

"The records in this office give the following disclosures:

"Alabama Mineral Land Co., Incorporated in Calhoun County, Anniston, Alabama on June 12th, 1883. New York—Filed December. Making W. J. Davis its agent in Alabama.

"Alabama Mineral Land Co. incorporated in Jefferson County, Birmingham, Alabama on May 14th, 1883. Capital stock \$1,000,000.00. Capital stock decreased to \$800,000.00 on November 23rd, 1903 and to \$357,000.00 on May 14th, 1926. 5,037 shares par value \$70.00 each, May 31st, 1943, filed in this office Nov. 1, 1943. The incorporators are E. D. Randolph, W. H. Woods, R. T. Wilson, J. J. Crane, W. A. Paton and D. S. Appleton. Alabama Mineral Land Co. & Oden-Elliott Lumber Co. merged and continued as Alabama Mineral Land Co. on Nov. 1, 1943. The records bear the notation 'Inc. Calhoun County.'

"Taxes and fees, however, have been regularly paid to the State throughout the years by one corporation; the properties have been in the ownership of one; the directors have been of one; the operations have been of one; the officers have been of one; and the stockholders have been of one, not two or more.

"On June 1, 1903 there was filed in the office of the Probate Judge of Calhoun County a verified document containing, besides the list of stockholders, the following:

"The undersigned stockholders of the Alabama Mineral Land Company, a corporation organized under the General Laws of the State of Alabama, holding a majority in value of the stock of said corporation, desiring to renew and extend the charter of such corporation for a period of twenty years from the date of the filing hereof, hereby declares:

"1. The name of the original corporation is The Alabama Mineral Land Company, and the date of its charter is the 12th day of June, 1883, and the same was obtained under the General Laws of the State, and the original proceedings were filed in the office of the Judge of Probate of Calhoun County, Alabama.

"2. It is the desire of the majority in value of the stockholders of said corporation to renew and extend the charter of such corporation for a period of twenty years.

"3. The names of the stockholders signing this declaration of renewal and extension and the number of shares owned by each of them are as follows: ***

"On May 30, 1927, there was filed in the office of the Probate Judge of Jefferson County a verified document in substance to the following effect:

"(1) Certificate that a meeting of the Board of Directors of the Company passed a resolution that an extension of the corporate existence of The Alabama Mineral Land Company was desirable and calling a meeting of the Stockholders to act thereon; that the holders of the larger amount in value of each class of the stock had met and voted in favor of the renewal or extension and that a copy of the minutes of meeting of the stockholders was attached; all signed by the President and Secretary under the seal of the corporation.

"(2) A copy of the minutes of the Directors' meeting adopting a resolution that an extension of the corporate existence was desirable and calling a stockholders meeting for the purpose of taking action on the matter.

"(3) A copy of the minutes of the stockholders' meeting unanimously adopting the resolution extending the corporate existence for fifty years, by all stockholders present, being holders of the larger amount in value of the stockholders having voting power.

"(4) Direction by the stockholders to file report of action in the office of the Probate Judge of Jefferson County, the 'county in which this corporation was originally organized,' as provided by Section 6982 of the 1923 Code.

"Under the above circumstances, will you please advise:

"1. Is there one, or more than one, corporation?

"2. Was the renewal filed in Calhoun County in 1903 effective to continue the existence of this corporation?

"3. Was the renewal filed in Jefferson County in 1927 effective to continue the existence of this corporation?"

The answers to your questions, seriatim, are as follows:

1. There is only one corporation. Code 1876, Chapter I, Article VII, Sections 1937, 1938, and 1939 are as follows:

"§ 1937 (1755). Declaration in writing.—When two or more persons are desirous of forming a life insurance, mutual aid, building and loan association, or association for any lawful enterprise not otherwise provided for in this Code, and of becoming incorporated, such persons must make a declaration in writing stating:

"1. The name of the company or association, and the object for which it is formed.

"2. The amount of capital stock, and the number of shares into which the same is divided.

"3. The names of the stockholders, and the number of shares held by each."

"§ 1938 (1756). Declaration must be recorded.—This declaration, signed by the stockholders, must be recorded in the office of the judge of probate of the county or counties in which such business is to be carried on."

"§ 1939 (1757). Corporation formed when declaration filed, signed and recorded.—Upon the filing and recording of such declaration, the persons who have signed the same, and their successors, become a body corporate by the name stated therein, and with the powers conferred on private corporations by this Code."

Obviously, it was in compliance with Section 1938 that filings of the declaration were made in the sixteen named counties.

However, the identical nature of the declarations, the officers, business, property and purposes show clearly the intent to organize one corporation and one only. The conduct of its affairs since the date of incorporation clearly shows that only one corporation was, in fact, in existence. The payment of taxes and fees since incorporation, and their receipt by the state, shows clearly that not only in the eyes of the corporation's officers and stockholders, but in the eyes of the state as well, there has been only one corporation.

To hold that by the filing of the declaration in sixteen counties sixteen corporations were created, in view of the statute and the facts would be an absurdity. Furthermore by the very wording of Section 1939 only one corporation could have come into being.

There was in the Code of 1876 no provision that such corporation should select a county of incorporation. This first appears in the Code of 1886, where it is provided that the declaration shall be filed in the office of the Probate Judge "in the county in which it is proposed the corporation shall have its principal place of business." Code 1886, Chapter 11, Section 1660.

2. The extension filed in Calhoun County was timely and sufficient. Section 1941, Code of Alabama of 1876, is as follows:

"§ 1941 (1759). Duration limited.—No company incorporated under the provisions of this chapter shall continue for a longer term than twenty years, unless renewed according to the provisions thereof, within one year before the expiration of its term."

But Section 2027, Code of 1876 provides:

"§ 2027 (1775). Powers extended five years after dissolution, to settle their affairs.—All such corporations whose charters expire by their own limitation, or are annulled by forfeiture, or dissolved for any other cause, exist as bodies corporate for the term of five years after such dissolution, for the purpose of prosecuting or defending suits, by or against them; settling their business, disposing of their property and dividing their capital stock; but not for the purpose of continuing the business for which they have been or may be established."

The Supreme Court in the case of **Rayburn v. Guntersville Realty Company**, 228 Ala. 662, 154 So. 812, 93 A. L. R. 1055, has held that under this statute a renewal or extension is timely if filed within five years after termination of the period set by the charter.

General Acts 1903, p. 115, under which the Calhoun County renewal was filed, and which amends Section 1260 of the Code of 1896, provides in part that renewal and extension of charters is to be secured by filing a declaration containing certain information "in the office where the original articles of incorporation were filed."

One of the original declarations of incorporation was filed in Calhoun County. The filing of the renewal there was, under the law then in effect, proper and effective to extend the life of the corporation for twenty years.

3. The renewal filed in Jefferson County in 1927 was effective to continue the existence of the corporation.

By its terms as renewed in Calhoun County in 1903, the charter expired in 1923. But the 1923 Code contained the usual provision extending its life for five years. Code 1923, Section 7069. And the Supreme Court has held that the renewal within these five years is proper. See *Rayburn v. Guntersville Realty Company*, *supra*.

The Code section under which renewal was applied for and secured in Jefferson County was Section 6982 of the Code of 1923, which provides for the filing of copies of a resolution by the directors and a showing of affirmative action by a majority of the stockholders, to be filed and recorded in the office of the judge of probate "of the county in which the corporation was organized." Since, in accordance with the provisions of the Code of 1876, the declaration was filed in Jefferson County, one of the counties in which the business of the corporation was to be carried on, and since under this Code section (§ 1938) no particular county was required to be selected as the county of organization, there is no reason why Jefferson County should not have been selected in which to file the renewal or extension.

The fact of filing of the first extension in 1903 in Calhoun County does not alter this conclusion. The law prevailing at that time (Gen. Acts 1903, p. 115) required filing in the county "in which the original articles of incorporation were filed." As seen heretofore, the original declaration was filed in Calhoun as well as Jefferson and fourteen others. And also, as noted, in the original declaration Birmingham was named as the chief place of business.

It is settled law in Alabama that where there are laws under which a corporation can be created and a bona fide attempt is made so to do, a de facto corporation results, subject to attack only in direct proceedings by the state. *Alabama Fidelity Mortgage and Bond Co. v. Dubberly*, 73 So. 911, 198 Ala. 545, and cases cited. But under the facts herein set out, with the literal compliance with statutes then in effect, and assuming that the corporation was organized under Section 1937, et sequitur, of the Code of 1876, the Alabama Mineral Land Company is a de jure corporation.

In connection with questions No. 2 and 3 there is a further consideration.

Although from the action of the incorporators in filing declarations in sixteen counties, and the inclusion of Sections 1937, 1938, 1939 and 1940 of the Code of 1876 in the declaration it would appear that the corporation was formed under these code sections, this is not necessarily the case.

Code 1876, Section 1803, et sequitur, provides for the formation of manufacturing, mining, immigration and industrial business corporations. This corporation would seem to fit into this category, since mining and other industrial activities are a part of that development outlined in the declaration.

Under Section 1810 of the Code of 1876, corporations organized under Section 1803 have the right of perpetual succession. No limit of duration was prescribed in the charter, save possibly by implication. Assuming, therefore, that under the charter phrase "in accordance with the Constitution and Laws of Alabama" the corporation was organized under Section 1803, et sequitur, the filing of extensions to the charter was unnecessary.

Whether the corporation was organized under Sections 1803, et sequitur, or under Sections 1937, et sequitur, of the Code of 1876, the result is the same. The corporation is de jure.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 6, 1946.

Hon. William W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

ELECTIONS—

CERTIFICATES OF EXEMPTIONS FROM PAYMENT OF POLL TAX—

1. Section 194½ of the Constitution, as amended, vests in the veteran falling within its provisions the right to vote without legislation on the matter although his name may not appear on the official lists of qualified electors.

2. Under the rules and regulations prescribed December 15, 1944, by the Governor, authorized under the amendment to Section 194½ of the Constitution, a veteran who is exempt from the payment of a poll tax may apply in person to the probate judge for a certificate of exemption and also to have his name entered upon the official list showing his exemption from payment of poll tax.

3. The foregoing applications may be made to the probate judge orally or in writing.

4. The probate judge is not authorized to act in these matters on his own initiative, but only upon the application of the veteran.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of February 21, 1946, is as follows:

"Please advise at your earliest convenience whether a veteran should be marked exempt and placed upon the poll list unless he, or someone representing him, comes into the office of the Judge of Probate and obtains a certificate of exemption.

"The fact that when he appears before the Board of Registrars and when they ask him his occupation he replies that for the past several years he has been in the Army, that does not place, in my opinion, the Judge of Probate on notice that he is a veteran and entitled to exemption.

"The question that I am trying to settle is outlined in the first paragraph. Is a veteran entitled to an exemption unless he, or his representative, claims this exemption from the Judge of Probate before the poll list is compiled?"

Section 194½, as amended, furnishes the background for your questions. The amendment is to be found in General Acts 1943, pages 199-201. This amendment in mandatory language fixes and settles the question as to the right of exemptions. If the veteran falls within the terms of the amendment his right of exemption from payment of a poll tax in order to vote is complete and vested and he cannot be denied the right to vote because perchance his name is not on the poll list.

The open question is, How is the veteran to establish this right?

The amendment lays down no procedure therefor. It does say the legislature is authorized to enact laws designed to carry out the purposes of the amendment. Plainly the purposes of the amendment are to give the veteran the benefit of the exemption. This clause simply vests in the legislature power to pass the legislation to prescribe what the veteran must do in order to make proof of the fact that he is such veteran. However, the legislature has enacted no such laws. The amendment contains on this subject the following:

"The Judge of Probate shall issue a certificate of exemptions to a person exempted from the payment of poll tax by reason of this section **under such rules and regulations as may be prescribed by the Governor.**" (Italics supplied.)

We may reasonably infer that it was intended that this provision was to do service until the legislature convened and legislated on the subject.

This brings us to a consideration of this quoted clause. This clause vests no authority or duty in the probate judge to act on his own initiative. He cannot act until the Governor prescribes rules and regulations and then only in obedience to such prescribed rules. It must be further noted that the amendment conferred authority on the Governor only to prescribe rules and regulations as to the issuance of a certificate of exemptions to the exempt veteran. All this is for the undoubted purpose of having an official record as evidence of the veteran's rights.

It appears that the Governor undertook to prescribe rules and regulations on December 15, 1944, the pertinent parts of which are:

"1. The Probate Judges of the several counties shall pass upon the eligibility of any person making application for a certificate of exemption under Section 194½ of the Constitution of Alabama, and shall issue to all persons found to be entitled thereto certificates in the form shown by Exhibit 'A' hereto attached and made a part hereof."

"3. All persons otherwise qualified under the Constitution and laws of the State of Alabama, when such certificates shall have been issued to them shall be entitled to be entered upon the list of qualified voters."

It is clear that Rule 1 vests judicial power in the probate judge to hear and determine the eligibility of a veteran to the exemption and to issue a certificate of exemptions to him. If the certificate is issued then under Rule 3 prescribed by the Governor the veteran is entitled to be entered upon the list of qualified voters.

Just how the veteran is to do this is not altogether clear and we must resort to construction. It is left to inference as to how the veteran shall proceed to get his name on the list. To give the Governor's rules a very liberal construction we may draw the conclusion that the application may be made to the probate judge to add the name to the list of qualified voters. The judge is the custodian of such lists. We may fairly conclude that the veteran may in one act apply to the probate judge for the certificate of exemption and also for the entry of his name upon the list of qualified voters.

In any event the probate judge is not authorized to act until an application is made to him and the application must be made by the veteran in person. No particular method is required. It may be made orally or in writing.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 14, 1946.

Hon. Frank O. Deese,

Judge of Probate,

Dale County,

Ozark, Alabama.

Counties—General Acts 1945, No. 350—

Counties authorized to maintain recreation center under General Acts 1945, No. 350 approved July 6, 1945.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion bearing date of March 4, 1946, is as follows:

"I am in receipt of your opinion under date of February 27, 1946, setting forth that no legal authority exists for a joint maintenance of the Ozark Community House by the City of Ozark and Dale County.

Since receiving your opinion there has been brought to my attention House Bill 300, by Waldo E. Ard, which was approved by the Governor on July 6, 1945, and I am writing to inquire if, under the provisions of this Bill, the Court of County Commissioners has the authority to make an appropriation jointly with the City of Ozark for the maintenance of the Ozark Community House, the activities of which have been set forth in my previous request for your opinion."

In the opinion referred to above (February 27, 1946) we stated that the county had no authority to appropriate funds for the maintenance of a meeting house or recreation center in the city of Ozark. Our former opinion was based upon the understanding that there was no statutory authority allowing the county to make an appropriation for the maintenance of recreational facilities. Since this opinion has been rendered an Act, approved July 6, 1945, General Acts of 1945, has been called to our attention in this matter. This Act, after providing for the establishment of a recreation board, provides as follows:

"Section 5. The governing body of a county or municipality may make appropriations from county or municipal general funds to the recreation board for the support and maintenance of the board, a recreational program, and recreational lands, buildings, equipment, and facilities. The governing body may designate for use as parks, playgrounds and recreation centers and facilities any lands or buildings owned by, leased by, or loaned to the county or municipality. The governing body may improve and equip or appropriate funds to the board for improving and equipping the lands and buildings for recreational purposes. The governing body may acquire lands, buildings, and facilities for recreational purposes by means of purchase, lease, loan, gift or condemnation procedure, and shall have power to accept financial and other aid and grants for recreation purposes from any public or private agency. Any county or municipality may join with one or more counties or municipalities in acquiring property for recreational purposes and, through the recreation board, join similarly in the operating and maintaining of playgrounds, parks, and recreation centers and facilities. Any county or municipality may co-operate with another county or municipality by establishment and maintenance of a joint recreation board."

It is our opinion that the above section of the Act approved July 6, 1945, affords statutory authority for the county governing body to appropriate its funds for the maintenance of a recreation center or meeting house as described in your inquiry of January 16, 1946.

It is further our opinion that such appropriation can be made jointly with a municipality.

The opinion rendered February 27, 1946, is therefore withdrawn.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 14, 1946.

Hon. John B. Sockwell, Chairman,
Court of County Commissioners,
Colbert County,
Tuscumbia, Alabama.

Voters lists, publication—Code 1940, Section 713, Title 7 and Section 38, Title 17—

Voters list must be published in newspaper of general circulation printed, at least in part, in the county of origin of said voters list.

Opinion by Assistant Attorney General Small.

Dear Sir:

Your request for an official opinion, bearing date of February 25, 1946, is as follows:

"The Tri-Cities Daily is a daily newspaper owned by the J. L. Meeks family, all of whom reside in the adjoining town of Florence, Alabama.

"The Tri-Cities Daily maintains an office in Sheffield, Colbert County, Alabama, and all of its books and records are kept in Sheffield, Alabama.

"The paper is actually printed in Florence, Alabama, and brought from Florence to Colbert County and distributed to its subscribers.

"All copies delivered by mail are entered in the post office at Sheffield, Alabama, under second class mailing privileges.

"The point has been raised that this paper is not published in Colbert County, Alabama, in the sense that it is eligible for legal advertisements such as mortgage sales and the publication of voters lists by the County. I have this latter question particularly in mind in presenting this matter to you.

"In the matter of the publication of the voters list which is the particular question that I have before me at this time I call your attention to Section 38, Title 17 of the Code of 1940 which directs me to publish the voters list 'in some newspaper with a general circulation in said county.' This may be the controlling section of the Code in regard to the publication of the voters list. I have been unable to determine whether Title 7, Section 713 of the Code of 1940 which relates to legal notices in general and requires that the paper be published in part in the County should be construed as an amendment to this specific provision set out in Section 38, Title 17 of the Code of 1940 or whether on the other hand this Section 38 of Title 17 of the Code is to be construed alone and will control without reference to the other statute.

"I am very anxious to receive a ruling upon this question the first date possible and will appreciate hearing from you without delay."

In reply I wish to refer you to Section 38, Title 17, **Code of 1940** and Section 713, Title 7, **Code of 1940**, which, in my opinion, must be construed together and in pari materia as a system of law controlling a given subject. When so construed the legislative intent becomes apparent that all publications required by law to be published in a newspaper of general circulation in the county must be published in a paper printed at least in part in the said county. I wish to refer you to an opinion of the Attorney General reported in **Biennial Report of Attorney General 1934-36**, page 364, addressed to Hon. W. H. Butler, Judge of Probate, Madison County, Huntsville, Alabama, under date of October 30, 1935.

In this opinion the Attorney General stated, in pertinent part, as follows:

"The statute requires that the publication of legal advertisements shall be made in newspapers, 'printed in whole or in part and published in the County in which the advertisement is published ***.' It does not require that any particular percentage or proportion of the printing shall be done in the county in which the advertisement is published but some part of the printing must be done in such county. As used in the Act, the word 'print' means to do the typesetting, press work, etc., necessary to the publication of the newspaper. See definition of 'print' in Webster's New International Dictionary. The meaning of the phrase in the Act 'publishing in the county in which the advertisement is published' is made clear when the distinction in meaning between 'print' and 'publish' is kept clearly in mind. In an explanatory note under the word 'publish' in the dictionary cited supra, it is said: "Print" and "publish" are often confused. A book may be printed without being published; it is published only when it is offered for sale or put into general circulation."

Also I wish to refer you to an opinion of the Attorney General, reported in **Quarterly Report of Opinions of the Attorney General**, Volume 35, page 82, addressed to Hon. S. E. Boozer, Judge of Probate, Calhoun County, Anniston, Alabama, under date of June 12, 1944, which construes the above-named sections of the Code of 1940 and is in conformity with the opinion of the Attorney General above quoted.

Premises considered, it is my opinion that the above-quoted sections of the Code of 1940 must be construed together as a system of law controlling a single subject, and when so construed it becomes evident that the voters list must be published in a newspaper of general circulation printed, at least in part, in the county where said voters list originated.

Yours very truly,

WILLIAM N. McQUEEN,
Attorney General.

March 15, 1946.

Hon. George H. Jones, Register,

Circuit Court,

Montgomery County,

Montgomery, Alabama.

When a gambling device has been seized, condemned and forfeited under Article 4 of Chapter 46, Title 14, Code of 1940, the officer making the seizure of said device is entitled to one-half of the money taken therefrom and it is immaterial whether such officer is paid a salary or is on a fee basis.

Opinion by Assistant Attorney General Savage.

Dear Sir:

Your request for an official opinion, bearing date of February 19, 1946, is as follows:

"I have your opinion addressed to this office, dated July 19, 1943, on the subject of the disposition of the contents of condemned gambling devices, wherein you held that the seizing officer, being on a salary basis, was entitled to no portion of the contents, but that all of the contents should be paid over to the County Treasurer.

"Since the rendition of your opinion of July 19, 1943, the Supreme Court of Alabama has handed down two decisions relating to the right of public officers to receive compensation in addition to their public salaries, namely: *Mosely vs. Kennedy*, 17 Southern (2nd Series), 536, and *Dallas County vs. Kennedy*, 21 Southern (2nd Series), 678.

"The Court ruled in these cases that a Sheriff and his deputies were entitled to receive, in addition to their regular salaries as public officers, certain informers' fees, such fees being in the nature of inducements or rewards.

"As I believe it probable that the above named Supreme Court decisions affect your ruling on this point, I would appreciate very much your advice as to whether, first: monies coming into the Register's hands out of condemned gambling machines come within the purview of these Supreme Court decisions; and secondly: your opinion rendered to this office on July 19, 1943, on this point is altered in any part by said Supreme Court decisions."

The cases of *Moseley v. Kennedy* and *Dallas County v. Kennedy* which you cite were appealed to the Supreme Court of Alabama from decisions of the Circuit Court of Dallas County, Alabama. Both cases considered the question as to who was entitled to receive the fifty dollars, allowed under Section 102 of Title 29, 1940 Code, to the Sheriff or other officer or person who furnished the evidence and brought about the conviction of the person charged with unlawfully distilling or manufacturing or making any of the prohibited liquors or beverages as defined by said Title 29.

By constitutional amendment (Amendment XLVI, Constitution 1901) certain county officers of Dallas County are on a salary basis and their salaries are fixed by this amendment. However, this same constitutional amendment authorizes the Legislature to fix, regulate and alter, from time to time, the fees, commissions, allowances, salaries or other compensation of any officer of Dallas County, except certain ones named therein. It also provides that those officers whose salaries are fixed by this amendment are required "to collect all charges of court, fees, commissions, allowances, percentages, salaries or other compensation provided by law, other than the salaries herein fixed, and to cover the same into the county treasury."

Section 1, Title 11, Code of 1940, prescribes that, "the law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law." The fees, expressly provided by statute, for the sheriff do not include the fifty dollars allowed as a reward under Section 102, Title 29, Code of 1940. However, in both of the above mentioned cases the Supreme Court held that said reward was not intended to be a part of the fees fixed by law for sheriffs (Sections 34 and 100, Title 11, Code of 1940) as compensation for the sheriff's official services, but that it (the reward) was intended to "spur individual initiative and diligence." The court said: "If the sheriff is required to cover them into the county treasury as a part of his compensation for official conduct, the intent of the Legislature would be entirely lost." In short, the court held that the sheriff was entitled to the reward even though he was on a salary basis. This was the decision of the court and the court had before it said constitutional amendment and the sections of the Code wherein the fees of the sheriff are prescribed.

Section 286, Title 14, Code of 1940, makes it the duty of the sheriff of any county in which any gambling device is found to seize the same, remove it from the place where it is found, and to keep it until it is disposed of as provided by Article 4 of Chapter 46, Title 14, Code of 1940.

Section 288, Title 14, Code of 1940, makes it the duty of the officer seizing and removing any gambling device to open it in any manner, in the presence of the register of the Circuit Court in Equity for the proper county, and to take therefrom any money or property found therein, and to turn over and deliver to said register said money or said property. This section further provides that if said device is condemned and forfeited as being in violation of law, the court shall direct in its decree that one-half of the money taken therefrom shall be paid to the officer making the seizure and the remaining one-half shall be paid into the general fund of the county in which said gambling device was found and seized.

By constitutional amendment (Montgomery County Salary Amendment No. IV) the sheriff and his deputies and certain other officers of Montgomery County are on a salary basis. This amendment also authorizes the Legislature, from time to time, to fix and alter the salaries of Montgomery County officers. This amendment also provides that the fixed amounts therein named for such officers as salaries and allowances "shall be in lieu of all compensations and allowances to the respective named officers."

You ask specifically, first, whether monies coming into your hands, as register, out of condemned gambling machines come within the purview of

the Supreme Court decisions cited by you; and secondly, whether my opinion rendered your office on July 19, 1943 on this point is altered in any part by said Supreme Court decisions.

My answer to both of your questions is in the affirmative. Following the holdings of our Supreme Court in the cases of **Moseley v. Kennedy**, 245 Ala. 448, 17 So. 2d 536, and **Dallas County v. Kennedy, Sheriff**, 246 Ala. 558, 21 So. 2d. 678, it is my opinion that the officer making the seizure of a gambling device that has been condemned and forfeited under the provisions of Article 4 of Chapter 46, Title 14, Code 1940, is entitled to receive one-half of the money taken therefrom, and it is immaterial whether such officer is on a salary basis or a fee basis.

The opinion rendered on July 19, 1943 by this office to Miss Lena Miller, then Register of the Circuit Court of Montgomery County, in Equity, being in conflict with this opinion is hereby overruled. (Quarterly Report of Attorney General, Vol. 32, p. 25.)

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 19, 1946.

Hon. John Graves,

State Comptroller,

Department of Finance,

Montgomery 4, Alabama.

Board of Registrars—Code of 1940, Title 17, Section 26, as amended, and Section 44—Act No. 346, General Acts of 1945.

When the board of registrars is required by two or more statutes to meet on the same day, members of the board may receive compensation for only one day's attendance upon the sessions of the board.

Opinion by Assistant Attorney General Arbuthnot.

Dear Sir:

Your request for an official opinion, bearing date of March 1, 1946, is as follows:

"Your official opinion is requested on the following point:

"Title 17, Sections 26 and 27, as amended, 1943 Legislature, by Acts Nos. 262, 263, and 561, and Title 17, Section 44, provide for the meetings of the Board of Registrars, also Act No. 346, 1045 Legislature.

"In view of the above statutes, can the State Comptroller pay members of the Board of Registrars for meetings on the first and third Mondays in January, 1946, in addition to the regular ten day meeting provided for in Section 26, as amended, and the six day meeting as provided in Section 44, *supra*?

"There are now more than twenty requests in this office relative to the above, and an early disposition, at your convenience, will be appreciated."

Title 17, Section 26, Code of Alabama, 1940, as amended, provides in part as follows:

"The board of registrars in each county shall meet at the court house on the third Monday in January, 1940, and each two years thereafter and shall remain in session ten working days for the registration of voters."

Title 17, Section 44, Code of Alabama 1940, is in part as follows:

"The board of registrars shall meet in each county on the first Monday in each county on the first Monday in January, 1940, and every two years thereafter, for purging the registration list, and may continue in session one week. *** "

Under the provisions of Act No. 346, General Acts of 1945, approved July 9, 1945, the board of registrars of every county is required to be in session at the court house on the first and third Mondays in each month for the purpose of registering voters.

It will be noted from Section 26, *supra*, that the board of registrars must meet on the third Monday in January, 1946, for the purpose of registering voters, and under the provisions of Section 44, *supra*, on the first Monday in January, 1946, for the purpose of purging the poll list. Under the provisions of Act No. 346, *supra*, the board must also meet on the first and third Mondays in January, 1946, for the purpose of registering voters.

It will thus be seen that there are two statutes which require the board to hold sessions on the first Monday in January, 1946 (Section 44, *supra*, and Act No. 346, *supra*), and two statutes which require the board to hold sessions on the third Monday in January, 1946 (Section 26, *supra*, and Act No. 346, *supra*).

The compensation for registrars is provided for in Title 17, Section 24, Code of Alabama 1940, which is as follows:

"Sec. 24. Fees, compensation of registrars.—Each registrar shall receive five dollars per day, to be paid by the state and disbursed by the several judges of probate, for each day's attendance upon the sessions of the board."

In my opinion, a member of the board of registrars is entitled to receive compensation (\$5.00) for only one day's attendance upon the session of the

board held on the first Monday in January, 1946, and only one day's attendance upon the session of the board held on the third Monday in January, 1946, notwithstanding the fact that there are two separate statutes which require a meeting of the board of registrars to be held on said first and third Mondays in January, 1946. The amount of compensation is for "each day's attendance upon the sessions of the board."

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 20, 1946.

Hon. J. H. Allen,

Tax Collector;

Lamar County,

Vernon, Alabama.

ELECTIONS

FULL PARDON FOR CRIME RESTORES RIGHT OF CITIZENSHIP—

1. A full pardon of one convicted of crime disqualifying persons of the right to vote under the Constitution of 1901, Section 182, restores such persons to the same citizenship held by them at date of conviction.

2. Such person is not due to pay any poll tax becoming due between the date of conviction and the date of pardon.

3. If such person was pardoned after the first day of February, if otherwise qualified, he may register and vote at the primary election on May 7, 1946.

4. Parties becoming twenty-one years of age after February 1, if otherwise qualified, may register and vote in the primary election on May 7, 1946.

Opinion by Assistant Attorney General Callahan.

Dear Sir:

Your request for an official opinion, bearing date of March 13, 1946, is as follows:

"As Tax Collector of Lamar County, I had occasion to make a ruling that I am not sure about. Two certain young men came into my office desiring to pay poll tax during the poll tax period. Each stated that he had never paid poll tax previously and desired to know just the amount

he would be due. They stated also that they had lost their citizenship several years ago and prior to the time they had reached the age of twenty-one years, due to the fact that they had been convicted of the charge of burglary and served a term in a state institution. Recently (1946) these two young men had been granted full restoration of their civil rights by the Pardon and Parole Board.

"The question is, would these young men be due to pay all poll taxes accumulated since they reached the age of twenty-one? Both have paid 1945 poll taxes. Does this qualify them as legal voters? Both have registered since receiving restoration of civil rights."

Your question involves a consideration of our Constitution and the statutes dealing with the matters about which you inquired.

The Constitution of 1901, Sections 178, 182, 184, and amendment to the Constitution, No. 38, bear directly on your question.

Section 178 of the Constitution makes the payment of a poll tax on or before the first day of February next preceding the date of the election at which he offers to vote a necessary qualification.

Section 194 of the Constitution provides who shall pay a poll tax. It says, "All male inhabitants (now the law includes females) over the age of twenty-one years and under the age of forty-five years." It fixes the amount of the poll tax at one dollar and fifty cents per annum, and also fixes the due date of the tax in this language: "Such poll tax shall become **due and payable** on the first day of October in each year and becomes delinquent on the first day of the next succeeding February." (Italics supplied.) We stop to note that the provision uses the word "due."

Section 182 of the Constitution in great detail shows who and what classes of persons are not allowed to register or vote. Among these classes are persons convicted of a crime punishable by imprisonment in the penitentiary. This latter requirement applies to some of the parties referred to in your letter.

Amendment 38 to the Constitution of 1901 authorizes the legislature to provide for relief from the disabilities resting upon persons falling under the provisions of Section 182 of the Constitution. By virtue of the amendment the legislature enacted Title 42, of the Code of 1940. This title creates a State Board of Pardons and Paroles. Section 16 of this title vests in the Board authority to grant pardons to persons who have been convicted of crimes mentioned in Section 182 of the Constitution, and in this grant it may expressly provide for the restoration of his civil and political rights of citizenship. See **Hogan v. Hartwell**, 242 Ala. 646.

Code, Title 17, Section 16, provides that any person who is disqualified from voting by reason of conviction of any offense mentioned in Section 182 of the Constitution (except impeachment or treason) who has received a pardon expressly restoring his citizenship carries the right to vote. In the case of **Hogan v. Hartwell**, *supra*, the court construes this Section 16, Title 17, very liberally, particularly the phrase "when specifically expressed in the pardon."

Under the above provisions a person receiving such pardon is placed in the same position of citizenship that he held before the conviction.

Keeping in mind the foregoing premises we will deal more specifically with your question. A party from the date of his conviction to the date of his pardon is not a citizen and could not vote under Section 182 of the Constitution, therefore he is not and cannot be due to pay a poll tax. If he owed no poll tax at the time of his conviction and he was pardoned after the first day of February this year, if otherwise qualified, he may register and vote in the May primary. This conclusion rests on the same principle as that applying to a person becoming twenty-one years old after the first day of February.

The Supreme Court has consistently held that a person becoming twenty-one years of age after the first day of February in a given year is due no poll tax until the following October 1 and may vote between those dates without payment of a poll tax. **Finklea v. Farish**, 160 Ala. 230; **Shepherd v. Sartain**, 185 Ala. 439.

The above principle applies to ex-service men and civilians alike.

We may suggest that the domicile of the convict at the time of his conviction is not changed by virtue of his being placed in the custody of the State in another county. This latter residence is not voluntary on his part and further, if such person was a registered voter at the time of his conviction and if after his pardon he returns to the county of his domicile at the date of his conviction it is not necessary for him to again register. **Hogan v. Hartwell**, 242 Ala. 646, 651.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 22, 1946.

Dr. B. F. Austin,
State Health Officer,
Department of Public Health,
Montgomery 4, Alabama.

Health—County Health Officer—Title 22, Section 12, Code of Alabama 1940—

County health officer authorized to discharge county health department employees.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 4, 1946, is as follows:

"On November 23, 1943, the State Board of Health adopted regulations providing for a merit system of personnel administration for employees of county health departments. Paragraph (a) of Section 4 of the regulations states that no employee of a county health department shall participate in any type of political activity, nor take any part in city, county, state nor national elections further than to express his opinion as an individual citizen, and to cast his vote.

"An employee of a county health department has announced for the State Senate and the appointing authority of the county health department, namely, the County Health Officer, has asked for his resignation. The employee in question doubts the right of the County Health Officer to do this, and your opinion in the matter is sought. I am attaching a letter from the employee to the County Health Officer for your information."

You are advised that the county health officer has a right to ask for the resignation of or to discharge any employee of the county health department. The validity of the rules and regulations for the establishment and maintenance of a merit system of personnel administration for county health service in the State of Alabama is not called into question by your inquiry.

Title 22, Section 12, Code of Alabama 1940, provides as follows:

"§ 12. Powers of county health officers defined.—The county health officer, elected as provided in section 8 of this title, shall devote all of his time to official work, and shall under no circumstances engage in private practice. He shall, under the direction of the state health officer and the county board of health, have sole direction of all sanitary and public health work within the county, including incorporated municipalities, and shall employ for his assistants, subject to the approval of the county board of health, such number of physicians, nurses, clerks, inspectors, and other employees as are found necessary to accomplish the work. The county health officer may remove from office any assistant or employee."

It is stated in your inquiry that the county health officer has asked for the resignation of the employee involved. The county health officer has express statutory authority to remove from office any assistant or employee. When this is the case the cause for removal should not be inquired into by this department. See *Touart v. State*, 173 Ala. 453, 56 So. 211.

If the county health officer chooses to give a reason for his discharging a county employee there is nothing to prevent him from stating that the employee has violated a regulation of the health department prohibiting political activities.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 25, 1946.

Mr. T. F. Hobart, President,

Alabama Section,

American Society of Civil Engineers,

Board of Registration for Professional Engineers and Land Surveyors,

911 Martin Building,

Birmingham 3, Alabama.

State Board of Registration for Engineers and Land Surveyors—
Code 1940, Title 46, Section 131 construed—Words and Phrases—
“Among” defined.

The word “among” as used in Section 131, Title 46, of the Code of Alabama 1940, requires more than two nominees to be presented to the Governor for selection of one among the nominees to fill a vacancy in the State Board for Registration of Professional Engineers and Land Surveyors.

Opinion by Assistant Attorney General Small.

Dear Sir:

Your request for an official opinion, dated March 16, 1946, is as follows:

“Confirming conversation between you and Mr. J. H. Mayer on March 14, 1946, please give us an opinion on your interpretation of Section 131 of the Code of Alabama 1940, Title 46, Chapter 7, Engineers and Land Surveyors. We are particularly interested in the number of nominees the committee shall recommend to the Governor for him to appoint a member to fill a vacancy in the State Board of Registration for Professional Engineers and Land Surveyors.

"Mr. J. H. Mayer has been appointed as the Alabama Section's representative to serve on the committee making recommendations to the Governor to fill the vacancy on the Board of Registrations for Professional Engineers and Land Surveyors caused by the death of Colonel A. L. Polk. Mr. Mayer is also a member of our Board of Directors."

In reply I wish to advise that the answer to your question turns upon a proper interpretation of the legislative intent to be given to the word "among" as the same is used in Section 131, Title 46, Code of 1940. This section provides, in part, as follows:

"The board shall consist of five professional engineers, who shall be appointed by the Governor from **among** nominees recommended by the representative National Professional Engineering Societies in the state and shall have the qualifications required by Section 89 of this Chapter." (Emphasis supplied)

The context of this section appears to deal with the method of selecting members for the State Board of Registration for Professional Engineers and Land Surveyors. It is provided in the above-named section that the board shall consist of five professional engineers, who shall be appointed from among the nominees offered to the Governor. Your request indicates that there is a single vacancy on the said Board to be filled by appointment from among the nominees offered to the Governor, and you desire to know how many nominees shall be so offered. It is my opinion that the word "among" when used in the sense that it is here employed must necessarily require at least one more than two, and may include any number above two since only one appointment is to be made.

The word "among" has been variously defined in different jurisdictions of the United States according to its use in the context of the instrument sought to be interpreted. Under the definitions found when applicable to the distribution of benefits among persons it has uniformly been held that among includes all persons named by the instrument as the class to which the benefits are directed. **Words and Phrases**, Permanent Edition, Volume 3, pages 340 and 344.

In **C. J. S.**, Volume 3 at page 1054, considerable discussion is given to the meaning of the word "among" or "amongst." Pertinent to the point here considered, however, we find the following statements:

"A word in common use the significance of which is often controlled by the context or the intent with which it is used. It has been said that comprehensive as the word is it may probably be restricted to what concerns more than one; that correctly used the word implies more than two persons or objects ***."

Premises considered it is my opinion that in order to meet the requirements of law named in your request, at least three nominees should be rec-

ommended by the committee to the Governor, and from among whom he may appoint a member to fill a vacancy in the State Board of Registration for Professional Engineers and Land Surveyors.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 25, 1946.

Mr. Ralph W. Roberts,

Director and State Registrar,

Bureau of Vital Statistics,

Department of Health,

Montgomery 4, Alabama.

Birth Certificates—Title 22, Section 23, Code of Alabama 1940, as amended.

Birth certificate cannot show name of father of illegitimate child unless legitimated.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, dated March 16, 1946, is as follows:

"Upon resuming my duties following a period of military leave I find that many problems are confronting this bureau which arise out of requests to enter the name of the father and change the name of the child on birth certificates of illegitimate children. The purpose of these requests is usually to enable the father to establish his relationship to the child so that the mother may collect an allotment. There is often no intent nor desire to legitimate the children in these cases. The nature of the requests received presents the following questions: (1) can the name of the father be legally entered upon the birth record of an illegitimate child? (2) can the birth record of an illegitimate child be changed to give the child the name of the father? (3) is the act of legitimation a prerequisite to, or must it take place concurrently with, a change of a child's name and/or the addition of the father's name to a birth record?

"I find nothing to enlighten us on the problem of changing a birth record of an illegitimate child, **correctly perpared** at the time of the birth, except through legitimation as provided in Sections 10, 11 and 12 of Title 27, of the 1940 Code of Alabama, and Section 33 of Title 22, **as amended in 1943.**

"We desire to establish a definite and impartial policy of handling these problems. Your advice and interpretation of legal provisions pertaining will be of tremendous value to us."

You are advised:

1. The name of the father cannot be legally entered upon the birth record of an illegitimate child.
2. The birth record of an illegitimate child cannot be changed to give the child the name of the father (unless the child has been legitimated as outlined in 3 below).
3. The act of legitimation is a prerequisite to the changing of a child's name or the addition of his father's name on a birth record.

If a child is born out of wedlock the law in reference to filling out the birth certificate of such a child is clear. Title 22, Section 33, Code of Alabama 1940, as amended by General Acts of 1943, page 459, Section 8, approved July 9, 1940, provides, in part, as follows:

" If the child is illegitimate no information relative to the father shall be entered In cases of legitimation in the manner prescribed by law the state registrar, upon receipt of a proof thereof, shall prepare a new certificate of birth in the new name of the legitimated child. The evidence upon which the new certificate is made and the original certificate, if any, shall be sealed and filed."

There are only two ways in which an illegitimate child may become legitimate. **Moore v. Terry**, 220 Ala. 47, 124 So. 80; **Lingen v. Lingen**, 45 Ala. 410, 414. One method is that described in **Title 27, Section 10, Code of Alabama, 1940**, when the mother marries the reputed father and the father recognizes the child as his own. The second method is that described by **Title 27, Section 11, Code of Alabama 1940**, where the father may legitimate the child by his own act by a declaration in writing recognizing the child as his own and by filing said writing in the office of the judge of probate.

In conclusion, therefore, you are advised that the birth record of an illegitimate child should contain no information as to the father. An illegitimate child usually takes the name of his mother. If the father later legitimates the child by the procedure under Title 27, Sections 10 and 11, and only if such legitimation takes place, you may file a new birth certificate for the child showing the father's name and other relevant data upon receiving proof of the legitimation. At that time and upon the filing of the new birth certificate for the legitimate child you are required to take the original birth certificate, together with the proof of legitimation, and seal such papers and file them in your office.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

March 26, 1946.

Hon. Charles Edgar Young,

Circuit Clerk,

Lauderdale County,

Florence, Alabama.

Costs and fees—Grand juries—

When no indictment is found witnesses before the grand jury are paid from the fine and forfeiture fund, also sheriffs' and clerks' fees, General Acts 1945, Nos. 416 and 413; Title 11, Sections 104, 110, Code of Alabama 1940.

Witnesses paid from fine and forfeiture fund when no indictment is found.

Sheriff's fee for summoning jury when no indictment found paid from fine and forfeiture fund. General Acts 1945, No. 413.

Clerk's fee for issuing subpoenas for witnesses before grand jury when no indictment found paid from fine and forfeiture fund. General Acts 1945, No. 416.

Opinion by Assistant Attorney General Sykes.

Dear Sir:

Your request for an official opinion, bearing date of March 13, 1946, is as follows:

"Will you please give me your official opinion on the following question:

"When a case has been docketed on the Grand Jury and continued from one Grand Jury to another and is finally returned a true bill, is the accrued costs of issuing subpoenas, serving subpoenas for Grand Jury and witness fees paid to witnesses before the Grand Jury in said case a proper item of cost to be charged against the defendant and to be paid by the State in the event that the defendant is convicted, as is other cost."

You are advised that when subpoenas are issued and served on witnesses to appear before the grand jury and that grand jury returns no indictment in the case the accrued costs of issuing subpoenas, serving subpoenas and witness fees cannot be charged against the defendant, and hence cannot be paid by the State even though defendant is indicted by a subsequent grand jury and convicted.

Of course, none of the fees and costs in criminal cases are paid by the State or the Convict Department unless the defendant is convicted and delivered to the penitentiary. **Title 45, Section 69, Code of Alabama 1940.** Obviously this condition cannot be fulfilled if there is no indictment returned.

When the grand jury fails to return an indictment, witness fees are payable from the fine and forfeiture fund of the county. **Title 11, Sections 104, 110, Code of Alabama 1940; Biennial Report of Attorney General 1936-38**, page 766. Clerk's fees for issuing subpoenas to witnesses before the grand jury when no indictment is returned are payable from the fine and forfeiture fund of the county (provided the clerk is not on a salary basis). **General Acts 1945, No. 416**, approved July 7, 1945. Further, the sheriff's fee for summoning witnesses before the grand jury when no indictment is returned is also payable from the fine and forfeiture fund of the county. **General Acts 1945, No. 413**, approved July 7, 1945. See also **Title 15, Section 393, Code of Alabama 1940**.

Former opinions of this office, **Biennial Report of Attorney General 1936-38**, page 125; **Office Edition of the Attorney General's Opinions**, Volume 5A, page 136, rendered July 12, 1936, hold that the statutes do not provide for the payment of the clerk's and sheriff's fees in such cases, and are, therefore, not controlling.

Yours very truly,

WILLIAM N. McQUEEN,

Attorney General.

INDEX

INDEX

Quarterly Report, Attorney General

Volume 42

January 1, 1946 Through March 31, 1946

Page

—A—

ACTS (GENERAL AND LOCAL):

GENERAL ACTS 1945:

Page 59	7
Page 253	20
Page 328	47
Page 330	47
Page 474	47
Page 563	41, 67
Page 565	61
Page 570	25
Page 658	77
Page 659	77

LOCAL ACTS 1935:

Page 164	8
----------------	---

ARCHITECTS:

State Board for Registration of—Funds requisitioned for purchases prior to end of fiscal year	23
---	----

—B—

BIRTH CERTIFICATES:

Illegitimate child—Name of father may not appear on unless legitimated	75
--	----

BOARD OF REGISTRARS:

Compensation—Required by two or more statutes to meet on same day—Entitled to only one day's compensation	67
---	----

—C—

CLERKS OF CIRCUIT COURTS:

Appeal from probate court to circuit court—Final record—	
Fee for preparing	34
Witnesses—Summoning for grand jury—No indictment found—	
Fees payable from fine and forfeiture fund	77

INDEX

(Continued)

	Page
CHILTON COUNTY:	
County Superintendent of Education—Salary—Local Acts 1935, p. 164, not repealed	8
CODE OF ALABAMA 1940:	
TITLE 7:	
Section 713	63
TITLE 11:	
Section 104	77
Section 110	76
TITLE 12:	
Section 12, as amended	50
TITLE 13:	
Section 198(9)	34
TITLE 14:	
Sections 286, 288	65
TITLE 17:	
Section 16	69
Section 26, as amended	67
Sections 26, 27, as amended	41
Section 38	63
Section 44	67
TITLE 18:	
Section 662	37
TITLE 21:	
Section 174	13
Section 746	13
TITLE 22:	
Section 12	72
Section 23	75
TITLE 25:	
Sections 5-30	34
TITLE 26:	
Section 349(12)	7
TITLE 27:	
Sections 10, 11	75
TITLE 36:	
Section 57	7

INDEX

(Continued)

	Page
Section 66	7
TITLE 37:	
Section 429(11)	25
TITLE 46:	
Section 13, as amended	23
Section 15, as amended	23
Section 131	73
TITLE 51:	
Section 2	5
Section 6	15
Section 607	29
Section 704, as amended	38
Section 755(b), as amended	34
Section 884	10
TITLE 52:	
Section 207	50
Section 361, as amended	18
Section 555	50
Section 566	20
TITLE 55:	
Section 305	32
TITLE 60:	
Section 71	13
COMPTROLLER:	
State Board for Registration of Architects—Funds requisitioned for purchases prior to end of fiscal year	23
CONSTITUTION 1901:	
Amendment IV	65
Amendment XLVI	65
Section 91	5
Section 93	47
Sections 177 and 178	41
Section 182	69
Sections 184, 186	41
Section 194½	59
CORPORATIONS:	
Alabama Mineral Land Co.—Filing of original incorporation papers in 16 counties—Has effect of creating one corporation	53
Alabama Mineral Land Co.—Renewals of charter—It effected continued existence of the corporation	53

INDEX

(Continued)

	Page
COSTS AND FEES:	
Circuit clerk—Appeal from probate court to circuit court— Final record	34
Clerks—Summoning witnesses for grand jury—No indictment found—Fees payable from fine and forfeiture fund	77
Extradition—State requesting must pay costs	37
Sheriffs—Summoning grand jury—No indictment found—Payable from fine and forfeiture fund	77
Witnesses—Grand jury—No indictment found—Payable from fine and forfeiture fund	77
COUNTIES:	
Concrete stadium for schools—Appropriation to assist in erection	50
Master Hospital Plan—Acts No. 210, 211, 287, Gen. Acts 1945, effec- tive without favorable vote on proposed constitutional amendment ..	47
Recreation Center—May appropriate fund for maintenance of	61
Section 93, Constitution 1901—Inhibitions imposed by not applicable to	47
COUNTY BOARDS OF EDUCATION:	
Chilton County—Superintendent—Local Act 1935, p. 164, fixing salary not repealed	8
Concrete stadium for schools—Appropriation to assist in erection	50
Military leave—School teachers—Entitled to employment in succeeding school year	18
COURTS OF COUNTY COMMISSIONERS:	
Concrete stadium for schools—Appropriation to assist in erection	50
Recreation Center—May appropriate fund for maintenance of	61
—D—	
DEPARTMENT OF FINANCE:	
State Board for Registration of Architects—Funds requisitioned for purchases prior to end of fiscal year	23
DEPARTMENT OF REVENUE:	
Industrial plants—Extensions and additions—Exemptions from taxation	15
DRIVERS LICENSE:	
Person 15 or over may obtain if otherwise qualified	7

INDEX

(Continued)

Page

—E—

ELECTIONS:

Constitutional qualifications to vote must exist at time of voting	41
Full pardon restores person to same citizenship held at date of conviction	69
Neither Constitution nor statutes require voter's name to be on registration list as prerequisite to voting	41
Pardon after Feb. 1—If otherwise qualified may register and vote in May Primary	69
Person disqualified to vote under Constitution 1901, Sec. 182— No poll tax due between date of conviction and pardon	69
Person becoming 21 after Feb. 1—May register and vote in May primary if otherwise qualified	69
Person must complete residence requirements in order to vote in general or primary elections	41
Person must possess all qualifications prescribed by constitution to vote in general or primary elections	41
Person registering too late to have name on list may make proof he is duly registered	41
Registration certificate, if valid, sufficient to show if person a registered voter	41
Registration list satisfactory evidence of qualification but not exclusive method of proving registration	41
Veterans—Exemptions—Vest under Sec. 194½ of Constitution without legislation, although name may not appear on official list	59
Veterans—Poll tax—Certificate of exemptions—How obtained	59
Voters' list—Must be published in paper printed at least in part in county of origin of voters' list	63

ENGINEERS AND LAND SURVEYORS:

State Board for Registration of—Nominees for vacancy in	73
---	----

EXEMPTIONS:

Ad valorem taxes—Industrial plants—Extensions and additions	15
Municipal Housing Authority—Sales tax	34
Municipalities—Property acquired after Oct. 1 subject to taxation	10
Municipal corporations—Water works system owned by— Exempt from ad valorem taxes	5
Poll tax—Veterans—Certificate—How obtained	59
Veterans—Licenses—Partnership	25
Veterans—Poll tax—Vest under Sec. 194½ of Constitution without legislation although name not on official list	59

EXTRADITION:

State requesting must pay costs of	37
--	----

INDEX

(Continued)

Page

—F—

FUNDS:

School indemnity lands—Fund to credit of in State Treasury— Investment in Alabama Building Corp.	20
School—Sixteenth Section lands—Fund to credit of in State Treasury—Investment in Alabama Building Corp.	20

—G—

GUARDIAN AND WARD:

Veterans—Incompetent—Probate records—When same must be furnished free of charge	13
--	----

HEALTH AND HEALTH DEPARTMENT:

Birth Certificates—Illegitimate child—Name of father may not appear on unless legitimated	75
County Health Department—Employees—County Health Officer— Authorized to discharge	72
Master Hospital Plan—Counties—Municipalities—Acts No. 210, 211, 287, Gen. Acts 1945, effective without favorable vote on proposed constitutional amendment	47
Master Hospital Plan—State may not participate in until favorable vote on proposed constitutional amendment	47

—H—

HOSPITALS:

Master Hospital Plan—Counties—Municipalities—Acts No. 210, 211 and 287, Gen. Acts 1945, effective without favorable vote on proposed constitutional amendment	47
Master Plan—State may not participate in until favorable vote on proposed constitutional amendment	47

—J—

JUDGES OF PROBATE:

Veterans—Poll tax—Certificate of exemption—Must have application for	59
Veterans—Public records—When furnished free of charge	13

—L—

LICENSES:

Freight transfer levied under Title 51, Sec. 607—Liability for under facts stated	29
--	----

INDEX

(Continued)

	Page
Motor vehicles owned by individual—Tag must be obtained in County where owner presently resides	38
Veterans—Exemptions—Partnership	25
—M—	
MERIT SYSTEM:	
Veterans—World War II—Preferences—Persons discharged prior to Dec. 8, 1941—Not entitled to	32
Veterans—World War I—Preferences—Person entering service after Nov. 11, 1918—Not entitled to	32
Veterans—World War II—Preferences—Persons inducted into service after surrender of Japan—Not entitled to	32
MILITARY AND NAVAL AFFAIRS:	
School teachers—Entitled to employment in succeeding school year	18
MOTOR VEHICLES:	
Individually owned—Taxes paid in County where owner presently resides	38
Individually owned—Tag must be obtained in county where owner presently resides	38
MUNICIPALITIES:	
Master Hospital Plan—Acts No. 210, 211, 287, Gen. Acts 1945, effective without favorable vote on proposed constitutional amendment	47
Municipal Housing Authority—Sales tax—Exemption from	34
Property abandoned for public use—Sale or lease of	27
Section 93, Constitution 1901—Inhibitions imposed by not applicable to	47
Taxation—Property acquired after Oct. 1 subject to taxation	10
Water works system owned by—Not subject to ad valorem taxation	5
—N—	
NEWSPAPERS:	
Voters' List—Must be published in paper printed at least in part in county of origin of voters' list	63
—O—	
OFFICERS AND OFFICES:	
Gambling devices—Officer making seizure—Entitled to one-half of money taken from whether on salary or fee basis	65

INDEX

(Continued)

Page

OPINIONS OVERRULED, MODIFIED AND DISTINGUISHED:

Biennial Report 1930-32, p. 507	50
Biennial Report 1936-38, p. 125	77
Quarterly Report, Vol. 32, p. 25	65
Office Edition, Vol. 5-A, p. 136	77

—P—

PARDONS, PAROLES AND PROBATION:

Full pardon restores person to same citizenship held at date of conviction	69
Person disqualified to vote under Constitution 1901, Sec. 182— No poll tax due between date of conviction and pardon	69
Pardon after Feb. 1—If otherwise qualified may register and vote in May primary	69

POLL TAX:

Person disqualified to vote under Constitution 1901, Sec. 182— None due between date of conviction and pardon	69
Veterans—Certificate of exemptions—How obtained	59
Veterans—Exemptions—Vest under Sec. 194½ of Constitution with- out legislation, although name not on official list	59

PROBATE COURTS:

Appeal to circuit court—Final record—Fee of clerk for preparing	34
---	----

PUBLIC SAFETY DEPARTMENT:

Drivers License—Person under 16 may not be employed to drive	7
Drivers license—Person 15 or over may obtain if otherwise qualified	7

PUBLIC WELFARE DEPARTMENT:

Child Labor Law—Motor vehicles—Person under 16 may not be employed to drive	7
--	---

—R—

REGISTRATION:

Person becoming 21 after Feb. 1—May register and vote in May primary if otherwise qualified	69
--	----

REWARDS:

Gambling devices—Officer making seizure—Entitled to one-half of money taken from whether on salary or fee basis	65
--	----

INDEX

(Continued)

Page

—S—

SALES TAX:

Municipal Housing Authority—Exemption from	34
--	----

SCHOOLS:

Chilton County—County Superintendent of Education—Salary— Local Acts 1935, p. 164, not repealed	8
Concrete stadium for schools—Appropriation to assist in erection	50
Military leave—Returning teacher entitled to employment in succeeding school year	18
School Indemnity lands—Funds in State Treasury to credit of— Investment in Alabama Building Corp.	20
Sixteenth Section lands—Funds in State Treasury to credit of— Investment in Alabama Building Corp.	20

SHERIFFS:

Gambling devices—Seizure of—Entitled to one-half of money taken from whether on salary or fee basis	65
Grand jury—Summoning witnesses—No indictment found— Fees payable from fine and forfeiture fund	77

—T—

TAXATION:

Industrial plants—Extensions and additions—Exemption from	15
Motor vehicles owned by individual—Taxes paid in county where owner presently resides	38
Municipal Housing Authority—Sales tax—Exemption from	34
Municipalities—Property acquired after Oct. 1 subject to taxation	10
Municipalities—Water system owned by—Not subject to	5

—V—

VOTERS:

Constitutional qualifications to vote must exist at time of voting	41
Full pardon restores person to same citizenship held at date of conviction	69
List—Must be published in paper printed at least in part in county of origin of voters' list	63
Neither Constitution nor statutes require voter's name to be on registration list as prerequisite to voting	41
Pardon after Feb. 1—If otherwise qualified may register and vote in May primary	69
Person becoming 21 after Feb. 1—May register and vote in May primary if otherwise qualified	69

INDEX

(Continued)

	Page
Person registering too late to have name on list may make proof he is duly registered	41
Person must complete residence requirements in order to vote in general or primary elections	41
Person must possess all qualifications prescribed by constitution to vote in general or primary elections	41
Registration certificate, if valid, sufficient to show if person a registered voter	41
Registration list satisfactory evidence of qualification, but not exclusive method of proving registration	41
 VETERANS:	
License taxes—Exemptions—Partnership	25
Poll tax—certificate of exemptions—How obtained	59
Poll tax—Exemptions—Vest under Sec. 194½ of Constitution without legislation although name not on official list	59
Public records—Probate—When furnished free of charge	13
World War I—Merit System—Preferences—Person entering service after Nov. 11, 1918—Not entitled to	32
World War II—Merit System—Preferences—Persons discharged prior to Dec. 8, 1941—Not entitled to	32
World War II—Merit System—Preferences—Persons inducted into service after surrender of Japan—Not entitled to	32

—W—

WITNESSES:

Grand jury—No indictment found—Payable from fine and forfeiture fund	77
--	----

WORDS AND PHRASES:

“Among”	73
“Public records”—Probate	13

